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CONSTITUTIONAL GOVERNMENT IN CHINA

Present Conditions and Prospects

W. W. WILLOUGHBY

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
DIVISION OF INTERNATIONAL LAW
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CONSTITUTIONAL GOVERNMENT IN CHINA

Present Conditions and Prospects

BY
W. W. WILLOUGHBY

Professor of Political Science at the Johns Hopkins University

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CONCORD

NOTE

A Conference on the Limitation of Armament was called on August 11, 1921, by the Government of the United States, to meet in Washington on November 11, 1921, the third anniversary of the signing of the armistice between the victorious Allied and Associated Powers and Germany. It met on November 12, 1921, and adjourned on February 6, 1922, having successfully concluded its labors.

The representatives of the Powers originally invited to the Conference were the British Empire, France, Italy and Japan, for the consideration of the question of the limitation of armament, and China for the discussion of Pacific and Far Eastern Questions. Later, representatives of Belgium, the Netherlands and Portugal were invited to take part in the discussion of questions concerning the Pacific.

The tentative program agreed upon embraced the following subjects:

Limitation of Armament

1. Limitation of naval armament, under which shall be discussed:
 - (a) Basis of limitation.
 - (b) Extent.
 - (c) Fulfilment.
2. Rules for control of new agencies of warfare.
3. Limitation of land armament.

Pacific and Far Eastern Questions

1. Questions relating to China.
 - First: Principles to be applied.
 - Second: Application.Subjects:
 - (a) Territorial integrity.
 - (b) Administrative integrity.
 - (c) Open door—equality of commercial and industrial opportunity.
 - (d) Concessions, monopolies or preferential economic privileges.
 - (e) Development of railways, including plans relating to Chinese Eastern Railway.
 - (f) Preferential railroad rates.
 - (g) Status of existing commitments.
2. Siberia (similar headings).
3. Mandated islands (unless questions earlier settled).
 - Electrical communications in the Pacific.

Under the heading of "Status of Existing Commitments" it is expected that opportunity will be afforded to consider and to reach an understanding with respect to unsettled questions involving the nature and scope of commitments under which claims of rights may hereafter be asserted.

In the belief that the dissemination of information regarding the status of armaments, the collection of official documents throwing light upon the situation in the Pacific, and the furnishing of accurate accounts of the issues involved in some of the more important problems confronting the Conference, would be a useful service, the Carnegie Endowment for International Peace undertook the preparation of a series of pamphlets of which the present pamphlet is one.

The meeting of so many nations in conference, following upon the close of a great war, was in itself an event of no mean importance. The holding of a conference upon the limitation of armament in succession to the First Hague Peace Conference called to consider the burden of armaments and the means for its decrease, with the possibility of an agreement in conference upon some of the questions of international import in addition to armaments, is an indication that the world is returning to "normalcy" and turning to the experience of The Hague.

JAMES BROWN SCOTT,
Director.

WASHINGTON, D. C.
April 15, 1922.

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CONSTITUTIONAL GOVERNMENT IN CHINA

PRESENT CONDITIONS AND PROSPECTS¹

Two lines of effort are open to those who would promote the cause of peace between the nations of the world. The one is the establishment of agencies for the peaceful and orderly settlement of international controversies as they arise; the other is the bringing of national policies into substantial harmony with one another, so that occasions for disputes, serious enough to endanger peace, will not be likely to arise. Could this second purpose be fully achieved, the institutions called for by the first program would become unnecessary. But, until such a complete international concord is created, the two lines of effort need to be both pursued.

The matter of securing mutual agreements between nations for limiting their military preparedness for war is based primarily, perhaps, upon a common desire to reduce, so far as is possible, the heavy economic burdens imposed upon those peoples who, under existing conditions, deem it necessary to maintain large military and naval establishments. But the movement has also its direct relation to the maintenance of international peace, for experience has conclusively shown, as, indeed, general reasoning was sufficient to indicate, that the maintenance of large standing armies and powerful navies is an incitement to war, either by creating in the minds of those peoples who possess them a conviction of power that tempts them to employ their might for the increase of their national prestige and dominion, without due regard for the rights and interests of other nations, or by causing such a burden of public taxation that, to escape from it, or at least to obtain from it some substantial political return, recourse to war, when military success is considered probable, is regarded as justified.

All of the foregoing considerations were recognized in the

¹This study was prepared prior to the convening of the Washington Conference in November, 1921.

invitation extended to the nations by the American Government for the Conference on the Limitation of Armament, to meet at Washington November 12, 1921. Thus, President Harding, in his letter of invitation of August 11, said:

Productive labor is staggering under an economic burden too heavy to be borne unless the present vast public expenditures are greatly reduced. . . .

It is, however, quite clear that there can be no final assurance of the peace of the world in the absence of the desire for peace, and the prospect of reduced armaments is not a hopeful one unless this desire finds expression in a practical effort to remove causes of misunderstanding and to seek ground for agreement as to principles and their application. It is the earnest wish of this Government that, through an interchange of views with the facilities afforded by a conference, it may be possible to find a solution of Pacific and Far Eastern problems, of unquestioned importance at this time; that is, such common understandings with respect to matters which have been and are of international concern as may serve to promote enduring friendship among our peoples.

Political and economic development in Europe since the termination of the World War has taught the world many lessons, but none more important than that political stability and economic prosperity, or their opposites, in one country, have unescapable effects in all other states which have dealings with that country. This truth, which has been so conspicuously manifested in Europe with reference to the dealings of France, Great Britain, Italy and Belgium with Germany, is equally exemplified in the Far East, where China, from this point of view, occupies the center of the stage. With its future is indissolubly bound up the political and commercial interests of all the Western powers which trade in the Pacific or have political interests or ambitions in that ocean.

Far Eastern Factors

The general political situation in the Far East may best be envisaged as one of three factors: of China, of Japan and of the interests of the Western powers; of China, with its vast size and population, its great natural but undeveloped resources, its potentiality as a market for the trade of the other nations, but, united with military weakness for defense against attacks from outside its borders, and administrative disorganization within its own limits; of Japan, with its relatively

restricted area, its numerous population, its expanding industrial and commercial activities and corresponding need for raw materials, and its eager and intense political imperialism; of the Western powers, with their many vested commercial and financial interests, which they desire not only to protect, but, if possible, to increase.

Here we have operating interests that are conflicting if judged from individualistic national points of view and therefore surely productive of international strife unless all the nations concerned can be persuaded either to abandon their points of view, or, retaining them, to agree upon working compromises just to all. It is, therefore, of great importance that those who influence or control the policies of these powers should have an intelligent understanding of the political and commercial conditions existing in China and the currents of thought and other forces in that country which may be counted upon to direct its future development.

To make more easily possible such an understanding, the present study is published. The effort will be to penetrate somewhat beneath the surface of constitutional events in order to ascertain what have been the forces which have operated to render less successful than could have been wished the experiment of republican government in China, and thus to determine what prospect there is that the Chinese will be able, with or without foreign assistance, to maintain a stable and efficient government constitutional in character and controlled by the will of the governed.

China the Central Problem

This question as to the outlook for constitutional and republican institutions in China, it is hardly an exaggeration to say, is the most important question which confronts those who frame the international policies relating to the Far East. There seems to be a general agreement upon the part of the Western powers that it is highly desirable, from the point of view of their own interests, as well as from that of the rights of the Chinese people, that China should remain a sovereign state and continue its development along Western commercial and political lines. Certainly this is the conviction of the

American people and the consistently avowed policy of the American Government. And the same would seem to be true of the British and French peoples and their governments even if it be admitted that the British have certain territorial ambitions in Tibet and along the Chinese-Tibetan border. As regards Japan, if we may judge by certain of her acts, and the statements of some of her public men, the matter is by no means so clear. Still, even in her case, her government has repeatedly stated, in the most unqualified and official manner, that it is its desire that China should preserve its sovereignty and territorial integrity, and obtain a government that will be efficient to promote and protect the welfare of its citizens. This matter of the interests of Japan in and her attitude toward China is one to which we shall later return.

If, then, it be granted that China should remain a great power, that its sovereignty should be recognized, its territorial integrity respected and its autonomous control of its own domestic affairs so far as possible conceded, it is seen how important is the question of the present political outlook in China. For, unless an efficient central government can be obtained in China, it can not be expected that other nations will find it feasible to respect its territorial sovereignty or its autonomy in domestic affairs. It is, indeed, one of the accepted doctrines of international law, and one that finds full justification in reason, that no nation can expect to have its status as an independent member of the family of nations respected unless it is able to maintain a government that has *de facto* power to maintain a general obedience to its commands throughout its own territory, and thus be able to fulfil the obligations which it owes, under accepted international law, to other states and to their citizens.

THE GOVERNMENT OF CHINA PRIOR TO 1912

The Old Régime

In order to understand the difficulties which have beset the republican government established in China in 1912, it is necessary that one should have at least a general knowledge of the character of the government which it replaced. This

is true for the double reason that not only are old political ideas and practices necessarily carried over in considerable measure into a new régime, but old administrative methods are retained. In France, as is well known, the administrative system built up under the absolute monarchy was largely preserved by the revolutionists, and, as later perfected by Napoleon I, continued in force during all the constitutional changes which France has since experienced. The same has been true in China. Representative assemblies with advisory powers were established in the provinces shortly prior to the revolution of 1911, and have since been continued, but this did not change the general relation of the provinces to the Empire, nor alter the general character of the administrative system within the provinces.¹ Furthermore, as will presently be referred to, the appointment of military governors or *tuchuns* in the provinces has profoundly altered the position and influence of the civil governors, and in general the control which the Central Government under the republican régime, has been able to exercise over provincial authorities. It still remains true, however, that, in general, the administrative system of the Republic of China is substantially the same as that which had been built up, and which had for so long persisted, under the Empire.

The Emperor

At the head of the old Imperial system was the Emperor, in theory with unlimited powers of government, and believed by himself and conceded by his people to possess a mandate from Heaven to issue such orders as he might see fit, and which his subjects were "tremblingly to obey." He had his chief or court officials or boards which he appointed or dismissed at will. His was the final authority in matters judicial, and no representative or otherwise constituted legislative chamber divided with him the right to issue legally binding orders. In practice, however, he seldom attempted to issue general rules in the nature of private laws—civil or criminal—his orders almost always being either administrative directions to officials, or decrees in determination of specific matters.

¹ These provincial assemblies did, however, have an influence upon the spirit in which the powers of the upper provincial authorities were exercised.

The Provinces

The Empire itself was made up of twenty-two vast provinces,¹ with populations ranging from five to fifty millions.² In each province was a governor, appointed by the Emperor, who was assisted by a few chief officials such as a judge, salt comptroller, grain intendant, etc. In some cases viceroys were appointed who had authority over two or more provinces, each of which until 1905 might or might not have its own governor. After 1905 there was no governor in the province in which the viceroy resided.

The distinction between provincial governors and viceroys is one not easy to state in definite terms. The chief official in the metropolitan province of Chihli was always termed a viceroy, and there was no governor of the province. The provinces of Shantung, Shansi and Honan were under no viceroyalty. The other provinces were grouped in twos and threes under viceroys, some of them having governors, others not. Of the viceroy, Hosea B. Morse, in his authoritative work *The Trade and Administration of China*,³ writes:

He is the highest in rank of the civilian officials of the provincial administration, but in theory ranks after, though he is not subordinated to, the Tartar General, when one is stationed within his viceroyalty; and he has control over the military forces, other than the Manchu garrison, within his jurisdiction. In some cases he is actually Governor, though with the power and rank of Governor-General, of one province only; in others he has jurisdiction over two or three provinces, each of which has (by the old theory) its own Governor; and still other provinces, each with its Governor, are subordinated to no Governor-General. . . . The Viceroy, though of higher rank and looming larger in the eyes of the world, is in the provincial administration a superior colleague to the Governor, and in all matters, orders to subordinates or memorials to the Throne, the two act jointly.

Functions of the Central Government

Free as were the provincial authorities from continuous control by the Central Government, there was in China no approach to a federal system of government under which the member bodies politic have clearly worked out constitutional

¹ Eighteen provinces of China proper, the three provinces into which, for administrative purposes, Manchuria was in 1907 divided, and Turkestan.

² These are estimates; no exact population statistics for China exist.

³ Page 49.

limits of independent action. There are not now, and never have been, constitutional limitations upon the range of functions which the Central Government may legally exercise. In practice, however, it has not attempted, until recently, to do much more than maintain its own nominal existence. It has controlled the appointments of the higher provincial, prefectural and district officials, it has collected certain general taxes and caused more or less definite contributions of money or grain or other produce to be remitted to it from the provinces, and it has maintained armies and has operated a system of state examinations from among the successful candidates to which appointments to its civil service have been made. It has also made provision for appellate tribunals in the provinces and at Peking to which appeals from the lower courts may be taken. During very recent years it has also established a certain number of higher schools and colleges and concerned itself with the construction and operation of railways and the working of mines. But this is as far as its activities have extended. It is thus seen how small a part the Central Government has played in the everyday life of the Chinese people. There was no real need for a central law-making body, executive mandates or ordinances being all that were needed.

A well-known authority,¹ describing the old Imperial system, declared:

The Central Government of China . . . is arranged with the object rather of registering and checking the action of the various provincial administrations, than with that of assuming a direct initiative in the conduct of affairs. . . . Regulations, indeed, of the most minute and comprehensive character, are on record for the guidance of every conceivable act of administration; and the principal function of the Central Government consists in watching over the execution of this system of rules. The bestowal of the higher appointments of the civil and military services, and the distribution of the superior literary degrees as rewards for proficiency in the studies upon which the entire polity of the Empire is based, comprise the remainder of the attributes reserved to the government established at Peking. The Central Government may be said to criticize rather than to control the action of the twenty-one provincial administrations, wielding, however, at all times the power of immediate removal from his post of any official whose conduct may be found irregular, or considered dangerous to the stability of the State.

¹ W. F. MAYERS, *The Chinese Government* (1898), p. 12.

Commenting on these words, written in 1877, Morse¹ says:

They take too little account of the centralizing policy forced upon the government by the importance of its foreign relations, and facilitated by the improvement in the means of communication.

More conspicuous even than the paucity of functions exercised by the Central Government in China has been its impotence to control the provincial and other local authorities. The very size of China, coupled with the absence of means of quick transportation or communication, has made impossible any executive centralized control. The result has been that under the Empire this control never was really attempted. Thus, a viceroy or provincial governor always had almost complete freedom to do what he would within the area placed under his jurisdiction so long as he made to Peking the proper provincial remittances and kept his people reasonably contented.

Local Governments

Each province, for administrative purposes, was divided into prefectures (Fu), each with its prefect; and these areas, in turn, divided into districts (Hsien), in charge of district magistrates. These prefects and district magistrates, like the viceroys and governors, also owed their appointment to the Emperor, and were subject to his direct orders and were removable from office at any time at his will.

The administrative importance of the Hsien and its magistrate was and is of sufficient importance to deserve a rather long quotation from Morse:

The Hsien is the civic, political, judicial and fiscal unit of Chinese life; it comprises one walled city, or in the case of many of the provincial capitals the half of a walled city (in the case of Soochow the third of the city), with the country immediately around it. In it every Chinese subject is inscribed, and this inscription he does not willingly forfeit or abandon, no matter to what part of the Empire or of the outer world his vocation may call him. Here is his ancestral temple if he is of the gentry, his ancestral home in any case; here he will return, if permitted, in the evening of his life, and here will his bones be sent should he die abroad. . . .

The Hsien is duly equipped with Treasurers, Collectors, Secretaries, Clerks, Jailers, Runners, Constables, etc., many of whom hold their positions by hereditary right or custom; but an official in China, though he may delegate his functions, can never delegate or absolve

¹ MORSE, *The Trade and Administration of China*, p. 40.

himself from responsibility, and the Hsien [District Magistrate] is personally responsible for every act of what one may call the municipal government. He is everything in the municipality. . . . He is Police Magistrate, and decides ordinary police cases. He is Court of First Instance in all civil cases. . . . The Hsien is also coroner; . . . he is also prosecuting attorney. . . . He is also sheriff to execute all judgments of his own or a superior court; and is jail warden. . . . The Hsien is the agent of the provincial and of the Imperial administrations in collecting the land tax and the grain tribute, but he has no concern with the special tributes or with the salt gabelle or likin; with them his sole connection is the duty of protecting the collectors. He is also Registrar of Lands. . . . He is Famine Commissioner. . . . He is the local representative of the *Kung Pu* [Imperial Board of Works] and the Provincial Treasurer in the custody of official buildings, and sees to the maintenance in order of city walls, prisons, official temples, and all other public buildings; and must maintain the efficiency and provide for the expenses of the Government courier service from border to border of his district. From his own funds he must execute such repairs as are ever effected to bridges and the things called roads, must see that schools are maintained, and must call upon the wealthy to contribute for public and philanthropic purposes. He maintains order, sees to the physical well-being of his District, and is the guardian of the people's morals.¹

Down to and including the Hsien was as far as the Imperial hierarchical centralized, administrative system went. Within the Hsien were and are the countless Chinese villages. These are units, without official or legal status, not parts, that is, of the general administrative system of the whole country, but self-governing communities so far as their own purely local affairs are concerned. Though having no formal official warrant, this control is exercised by the village elders or fathers, from among whom is nominated by the district magistrate an official known as the *tipao*, who represents the villagers in such relations as they may have with the Hsien and other administrative authorities. Of the village elders, Arthur Smith in his *Village Life in China* writes:

The theory in regard to these persons is that they are chosen, or rather nominated, by their fellow-townsmen, and confirmed in their position by the District Magistrate. In some regions this is actually done. . . . The designation "Village Elders" might be understood to denote that the persons who bear it are the oldest men in the village, but this is not necessarily the case. Neither are they necessarily the wealthiest men, although it is probable that every

¹ MORSE, *op. cit.*, pp. 56-58. See also, LEONG and TAO, *Village and Town Life in China*.

family of property will be in some way represented among them. They are not necessarily men of literary attainments, although this may be the case with a few. In those regions where the method of selection is most loose, the number of headmen has no necessary relation to the size of the village; the position is not hereditary, and neither is there any fixed time of service. A man may act in this capacity at one time, and refuse or neglect to do so at another time. Where this plan prevails, the headmen are not formally chosen, nor formally deposed. They drop into their places—or perhaps climb into them—by a kind of natural selection.

In truth, if we follow the old Chinese Government down to the Hsien, and even to the villages, we find governmental control of the lives of its citizens conspicuous only by its absence. The Chinese, being still in the agricultural or handicraft stage of economic development, needed, in fact, little more than police protection, and even as regards this one function, which is usually deemed essential to every government, the Chinese have been content to ask governmental assistance only upon occasions of especial need. In other words, the Chinese have not been accustomed to look to their local political rulers and much less to the superior authorities to supply them with elementary schools, to construct bridges and roads, to establish hospitals or libraries, to supply water or light or fire protection, or to promulgate and enforce regulations in the interest of the public health. The sum result of the practices is that outside of the larger cities there is very little government in China, at least in the strictly political sense of the word. If we except the collection of taxes, and the occasional recording of land transfers, many of the villages, which in thousands dot the country, go for years at a time without the performance in them of a single act that may properly be termed governmental. This means that the Chinese people have not so much practiced democracy in their local governments as that they lived without any real political government at all. Thus, in the sense that they are not, in their everyday affairs, subject to regulations created and enforced by law, the Chinese are one of the freest peoples on earth.

Not only had the Chinese, until the time of the Revolution, failed to see the necessity of endowing the Central Government with extensive powers of control over the authorities of the provinces and other subdivisions of the Republic, they

had not learned to give to it their primary allegiance. The Chinese people had an extravagant pride in their own race, its achievements and its civilization, but their patriotism as a force demanding obedience and self-sacrifice attached only to the family or at the most to the village or district. Indeed, it was the objection upon the part of the provinces to the attempt upon the part of the Central Government to monopolize the financial rewards from railway construction and operation that was one of the proximate causes of the revolution of 1911, which, beginning only as a revolt against the Manchu rulers, soon became a movement to abolish the Imperial system itself and to replace it with a republican rule.

Mr. J. O. P. Bland, one of the best known writers upon conditions in China, has the following to say with regard to the mental attitude of the great mass of the Chinese towards their Central Government and as to the relation of that government to the provinces:

The governments which came and went, the dynasties that won and lost the Dragon Throne, were passively accepted as part of the established order of the universe, but their functions of government, except at crises of rebellion or famine, rarely disturbed the even tenor of the people's way. Soldiers and police alike remained unknown to most of the inhabitants of the interior; no agent or official of the Government, except the gatherers of the annual land tax, required anything of them. In this sense, Professor Giles is justified in describing China as "a great democracy, living in the greatest Republic the world has ever seen." But when he invests these localized self-governing Chinese communities with a keen sense and jealous regard of national (as distinct from local) liberties, he ignores the fact that the physical conditions hitherto prevailing throughout the interior of China, have effectively prevented the formation and propagation of that public opinion by which alone national sentiments can be evoked and maintained. This error is common to many recent writers, who assume for the inarticulate impassive masses a definite share and sympathy in the political activities of Young China, and who believe them capable, because of their ancient local independence, of adopting representative institutions and a Republican form of government. But it must, I think, be evident that such forms of democratic self-government as have obtained in China for many centuries, have been primarily due to the fact that no administrative authority of the Throne could possibly have been made effective throughout so vast an Empire under the physical conditions then existing. Local autonomy ensued naturally from the inability of successive dynasties to exercise anything approaching to an organized public administration. The Throne

ruled, but did not assume to govern. Beyond the bounds of the city and village communities, there could be nothing in the nature of regulated popular government. The Throne's authority rested in the last resort upon moral force; owing to physical obstacles, it never possessed the machinery for the collection of taxes sufficient to maintain armed forces and to assert a supreme authority of administration. Such powers and revenues as the central and provincial authorities enjoyed were the result of voluntary obedience of the people to an order long established, and to indirect taxation along the lines of least resistance. That China has held together so long and, on the whole, so well, as a homogeneous Empire must be attributed to the inherent strength of the moral foundations, laid by the Sages, of those teachings which have formed the innermost soul of the people. More effectively than by the loose ties of feudalism which bound together locally autonomous communities under European monarchs in the Middle Ages, the unity of the Chinese nation has been preserved, first by the "Three Relations" of the Confucian philosophy, and, later, by the statecraft which instituted the system of public service examinations as a permanently cohesive agent. By this means, the eighteen provinces were educated and maintained in a common heritage of national philosophy, ethics, literature, laws and history, and, through it, they attained to a common interest in the provision of national legislators and officials. Their rights and opportunities of local self-government formed an essential part of the Confucian system, arising directly from the principle of parental authority. These local rights are fiscal as well as penal and administrative, and from their exercise have arisen, in all parts of the country, the capacity to combine for common ends and instinctive respect for law and order. But it is precisely in the strength of the local autonomy thus created and perfected, that lies the unsurpassable obstacle to the imposition on the nation of representative government of the modern European type. From the same cause springs an atavistic local antagonism to every innovation—such as Railways, or the opening of mines, or the appointment of Imperial officers to supervise the working of self-government Regulations—which threatens State interference with existing ways, or new burdens of responsibility and taxation.¹

Forces Sustaining the Empire

These observations, quoted from Mr. Bland's book, serve in part at least to explain what to the Western mind has seemed mysterious, how the Imperial Chinese Government was able, for so long a time, to maintain over the provinces and their peoples such authority as it did exercise. The answer to this question lies largely in certain characteristics of the ethical and political philosophy of the Chinese, which was

¹ J. O. P. BLAND, *Recent Events and Present Policies in China* (1912), p. 227.

uniform throughout the Empire and in which the Chinese have always taken such great pride.

The doctrines of Confucius and the other sages of China strongly upheld the monarchical principle. They taught that just as it was in accordance with the fundamental laws of reason that the father should have patriarchal authority over the members of his family, so the commands or wishes of the Emperor, as the father of the Chinese people, should be obeyed. Here was a natural or moral if not a legal obligation—an obligation that appealed to the reason and therefore did not need to be backed by a force that could be instantly and effectively applied.

In the second place, the state examinations, based almost wholly upon the substance and literary standards of the Confucian and other classic writings, exerted an enormous influence. Thus was opened to every male in the Empire an avenue to employment in the Imperial service—an employment that meant financial reward as well as the highest personal distinction. In this way, as the fountain of the most coveted honors, the Central Government was able to bind to itself all the influential men of the nation. At the same time, of course, these examinations served to preserve from change and to keep uniform throughout the Empire the cultural ideals of the Chinese.¹

Meadows, in a now old but still valuable work entitled *The Chinese and Their Rebellions*, discussing the long continuance of the Chinese Empire, found the most important cause to have been the instilling into the minds of the people, through the state examinations, of the following principles:

I. That the nation must be governed by moral agency in preference to physical force.

II. That the services of the wisest and ablest men in the nation are indispensable to its good government.

III. That the people have the right to depose a sovereign who, either from active wickedness or vicious indolence, gives cause to oppressive and tyrannical rule.

Of the state examinations, Meadows says:

¹ "The value of the competitive examination system as an enduring source of national cohesion and stability can scarcely be exaggerated." J. O. P. BLAND, *Recent Events and Present Policies in China*, p. 75.

In every case the institution of Public Service Examinations (which have long been strictly competitive) is *the* cause of the continued duration of the Chinese nation: it is that which preserves the other causes and gives efficacy to their operation. By it all parents throughout the country, who can compass the means, are induced to impart to their sons an intimate knowledge of the literature which contains the three doctrines above cited, together with many others conducive to a high mental cultivation. By it, all the ability of the country is enlisted on the side of that Government which takes care to preserve it in purity. By it, with its impartiality, the poorest man in the country is constrained to say, that if his lot in life is a low one, it is so in virtue of the "will of Heaven," and that no unjust barriers created by his fellow men prevent him from elevating himself. In consequence of its neglect or corruption, if prolonged, the able men of the country are spurred by their natural and honorable ambition to the overthrow of the, in their eyes and in the eyes of the nation, guilty rulers; a new dynasty is then established, which consolidates its power by restoring the institution in integrity and purity.¹

OUTLINE OF EVENTS IN CHINA SINCE 1911

The Revolution of 1911

In October, 1911, at Wuchang, in the center of China, a revolution broke out, the first purpose of which was the expulsion from power of the Manchu dynasty, which since 1644 had occupied the Imperial throne. This insurrection was, however, soon changed into a movement for the abolition of the monarchy itself and the establishment in its place of a republican form of government. After vain efforts had been made by the court at Peking to save itself by the promulgation of articles which, if put into force, would have meant the transformation of the former absolutism into a strictly limited constitutional monarchy, the reigning Emperor, Hsuan Tung, announced for himself and his family the surrender of the Dragon Throne and authorized Yuan Shih-Kai² to take such

¹ THOMAS TAYLOR MEADOWS, *The Chinese and Their Rebellions*, p. 403. In 1904 the old system of classical examinations was abolished, and a decree issued that graduation from one of the modern colleges should be the path to office. Since that time the replacement of the study of the Chinese "classics" by more modern, practical, and scientific subjects has been about as rapid as it has been possible to supply teachers in those subjects.

² Former Governor of Shantung and Viceroy of Chihli. He played a prominent part in the formation of China's modern army. Dismissed from his offices in 1909 by the Prince Regent, he was recalled as Hukuang Viceroy, with control of Imperial land and munitions forces, on the outbreak of the Revolution. Later he was appointed President of the Council of Ministers (Premier), and designated Imperial Plenipotentiary to arrange terms of peace with the revolutionaries.

steps as might be necessary to provide a new government for China.

As a result of negotiations carried on at Shanghai between Yuan and the leaders of the republican movement, the monarchy was abolished, Sun Yat-sen, who had been declared President by the southern revolutionists, resigned that office, and Yuan was elected Provisional President of all China. On March 10, 1912, Yuan was formally inaugurated at Peking and swore obedience to the Provisional Constitution, which had been hurriedly drawn up at Nanking. Thus was begun the attempt upon the part of the Chinese to maintain a Central Government which should be republican in form as well as constitutional in character.

The Republican Constitution

This instrument made provision for a Provisional President and Vice President and a single-chambered Council which was to serve as the national legislative body until a regular Parliament could be convened in accordance with laws which the Council was to enact, whereupon the Council was to go out of existence, its powers being assumed by the Parliament.

Acting under the authority given to it by the Provisional Constitution, the original Council enacted the necessary laws, and a bicameral Parliament was elected under them, convening at Peking in 1913. These laws provided a three years' term for members of the Senate, one third of whom, however, were, at the beginning, to sit for but two years, one third for four years, and the third third for six years, so that thus every two years the terms of one third of the Senators would expire and the people be given an opportunity to elect persons to fill their places.

The Parliament thus elected was constitutionally qualified to act not only as the national legislature of the Republic but as an electoral body to elect the President and Vice President, and as a constituent body to draft and promulgate a permanent Constitution.

By this Parliament the chapter of a permanent Constitution dealing with the election of the President and Vice President was drafted and promulgated, and thus, to this

extent at least, China obtained a permanent Constitution, the only part of a permanent Constitution, it may be remarked, which, up to the present time, she has secured.

In accordance with the permanent provisions thus laid down, Yuan Shih-kai, in 1913, was elected President, and thereupon discarded the title of "Provisional" President which he had previously borne. His term of office was to run until October 10, 1918. Li Yuan-hung was elected Vice President for the same term.

Dissolutions of Parliament

In the autumn of 1913, and before the remainder of the permanent Constitution could be adopted, Yuan Shih-kai, without serious claim of constitutional warrant upon his part, dissolved the Parliament. He did more than this: he went on to cause a new Constitution, termed the "Constitutional Compact," to be drafted and promulgated, thus abrogating the Provisional Constitution. The other measures taken by Yuan with regard to strengthening his executive position, culminating in his attempt to restore the monarchy and to mount the throne in 1915, it is not necessary here to describe, since, with the death of Yuan, in June, 1916, they were treated as null and void, the old Parliament was again convened and the Provisional Constitution again recognized by all as the fundamental law of the Republic.

The constitutional status of the Parliament when reconvened in 1916 was not wholly free from doubt, since already the terms of office of the members of the Lower House and of one-third of those of the Upper House had expired. But there was no disposition at the time to make a point of this since practically everyone agreed that this reconconvocation was a desirable step.

The Parliament thus reestablished sat upon alternate days as a legislative and as a constituent body, and, in this latter capacity, began the consideration of a draft of a permanent Constitution which had been drawn up in 1913 by a drafting committee of its own members. It appeared, however, that torrents of discussions had still to flow before a consummation of its constitutional labors could be attained, and before this

result was reached pressure from the military leaders compelled Li Yuan-hung, who had succeeded to the Presidency, again to dissolve the Parliament. In his mandate of dissolution Li made little effort to argue that he was acting within his constitutional powers. He did indeed mention the fact that so many members of the Parliament had resigned it was no longer possible to obtain a quorum, but no legal stress was laid upon this point, the mandate being frankly deplored as made imperative in order to avoid still more violent and revolutionary action upon the part of the military "statesmen" of the Republic.¹

A few weeks later President Li, without formal resignation—there was indeed no Parliament to which a resignation could be offered for acceptance—abandoned the Presidential chair and has since taken no part in the government. It was not generally admitted that, as a legal proposition, Li's resignation, if it can be called such, operated to divest him of the robes of office, and therefore, after that time, and until the inauguration of President Hsu Shih-chang, on October 10, 1918, Feng Kuo-chang, who had been elected Vice President to fill out the term of Li when he became President, described himself only as "Acting President."

After the dissolution of the Parliament in 1917 by President Li, the accepted constitutional theory in Peking was that the situation reverted to the one which had existed immediately after the Provisional Constitution had been promulgated in 1912 and before the Council had been replaced by a regular Parliament. Acting President Feng, therefore, caused to be convened a Council to which was entrusted the function of drafting new laws for the election of a new Parliament, and in accordance with the laws thus enacted, which laws differed materially from those passed by the Council in 1912, a new Parliament was elected, and since August, 1918, has been in session in Peking.

¹ Li might have argued that the dissolution was not illegal since the Parliament itself had no constitutional standing, the terms of many of its members, as previously mentioned, having already expired. This argument, however, he was naturally unwilling to use since it involved the admission that he had acted without constitutional warrant when he reconvened the Parliament after the death of Yuan. It was also not convenient to lay especial emphasis upon the fact that many of the members had already resigned their seats since these resignations had been brought about by pressure that was not wholly defensible.

The Canton Government

In the meantime, as was not surprising, the members of the old Parliament, who for the second time found themselves deprived of the opportunity to exercise their legislative and constituent powers, not to speak of being without the honors and emoluments of office, were not wholly satisfied with the situation. Nor were many of the supporters of the Republic pleased with the turn events had taken. Especially did dissatisfaction become widespread in the southern and southwestern provinces, where republican and constitutional ideas have, since the revolution of 1911, been more radical, as well as, perhaps, more ardently held, than in the north.

This dissatisfaction led to the issuance of a call to the members of the dissolved Parliament to assemble at Canton and there, removed from Peking control, to continue to function as the only body constitutionally qualified as the national representative body of the Republic.

During the summer of 1918 a quorum of the old Parliament was claimed to have been obtained at Canton, and thus China came to possess two Assemblies, the one sitting at Peking, the other at Canton, each avowing adherence to the Provisional Constitution, each claiming that the other was a "bogus" body, and each that it alone was the true, legal legislative body of the Republic, with all the rights, privileges and perquisites to that status appertaining.

At the same time there was the very remarkable circumstance that neither of these Parliaments attempted to make full use of the powers claimed to be possessed by it, or to perform those duties which properly belong to representative chambers under a republican form of government. The Parliament at Canton was indignant that the Parliament at Peking should have elected a President and that Hsu Shih-chang should have regarded his election as legal and assumed office, but, until 1921, itself made no effort to elect a President or to continue its labors as a constitution-making body.

On the other hand, although it had functioned as an electoral body for the election of a President, the Parliament at Peking made little attempt to legislate, or to compel the President's Cabinet to be "responsible" to itself, or to under-

take the task of framing a permanent Constitution. And, reciprocally, the President and Cabinet, although upholding the Parliament as the one constitutional representative body of the Republic, have, in practice, treated it with what can only be called constitutional contempt. They have not deemed it worth while to lay their policies before it for consideration, to seek its authorization for public expenditures, or to obtain its approval for public loans or other agreements of an international character.

Since this time, that is, during the past four years, there has been considerable intermittent fighting between the troops of the North and those of the South. At times efforts were made to bring about a compromise between the two governments.¹

The Canton Government for a time immediately prior to 1920 seemed to have gone out of existence by a process of gradual dissolution, but in 1920 was revived by a new convening of the "Constitutional Parliament" and the election by it, in May, 1921, of Sun Yat-sen as its chief, who has since styled himself President of China.

As thus provided with a President and Parliament and having the support, nominal or substantial, of a number of the provinces, this Southern Government has sought to obtain recognition by the other powers of the world as the *de facto* and *de jure* government of all of China. In support of this report the following "Manifesto to Foreign Powers" was issued from the President's office:

THE REPUBLIC OF CHINA

THE PRESIDENT'S OFFICE

Manifesto to Foreign Powers

During the last four years the patriots of China have been waging a war against the militarists and traitors of the country for the cause of constitutional government and for national existence itself. It has been no war between the North and South of China, but a struggle between militarism and democracy, between treason and patriotism. That the people in the North are sympathetic to the purposes and aims of the South has been demonstrated by the fact that they have spontaneously organised demonstrations and boycotts for the same purposes and aims.

¹ The government at Canton, if such it could be held to be, consisted at this time of the old Parliament and a small executive Council which styled itself "The Military Government of the Republic of China."

The Government at Peking has lost the last vestige of its control over the provinces, even those nominally within its jurisdiction, where the military satraps are plundering the people and ruining the country. It has even to take orders from them. These militarists wage war among themselves in the struggle for power. One of them has lately gone to the extent of traitorously leaguering himself with Russian monarchists and aiding and abetting them to attack and capture Urga. While the Peking Government is fast crumbling from sheer hollowness, foreign domination threatens to spread from the North to the South. The existence of China as a nation is in jeopardy.

Since the unconstitutional dissolution of the National Assembly in June, 1917, no *de jure* government has existed in Peking. New election laws may have been made and new National Assemblies may have been elected but they all lack legal basis. Confirmation of this view has come from an unexpected quarter, from Hsu Shih-chang himself, when he issued an order in October last for the holding of a general election based not on the new election law, which is the basis of his own title, but on the old election law, which is incompatible with his claim to the Presidency. The extraordinary spectacle is thus presented of the self-styled President of the Republic confessing that he has no legal right to that title.

Thus, in this hour of crisis when national existence itself is imperilled, there is in Peking no government which is legally constituted or able to discharge the functions of government. Under these circumstances, the National Assembly, the only body of legally elected representatives of all the provinces and territories of the country, has established a formal government and has elected me to be the President of the Republic. Being the founder of the Republic, I can not afford to see her in danger without making an effort to save her. Having been summoned once before in 1911 to the Presidency from which I resigned after a short tenure in order, as I thought, to bring about unity to the country, I intend now to do all in my power to discharge those duties and functions honestly, faithfully and to the satisfaction of my fellow citizens.

As the National Assembly which has elected me represents the whole country irrespective of North or South, so it shall be my first endeavour to unite all the provinces and territories of the Republic under one government which shall be progressive and enlightened. The legitimate rights of foreign Powers and their nationals, duly acquired by treaty, contract, or established usage, shall be scrupulously respected. The vast resources of the country, natural and industrial, shall be developed so that the whole world suffering from the disastrous effects of long years of war will be benefited. For this purpose foreign capital and expert knowledge will, in pursuance of the open door policy, be welcomed. There is little doubt that, with the Southern Provinces enjoying good government and prosperity under an honest administration and a constructive programme, the other provinces will be only too ready to throw off the yoke of militarism and misrule and, acknowledging the authority of this Government, bring about the much desired unification of the country.

I believe my task is lightened by the fact of the illegality and incompetency of the Peking Government. That Government is not recognised by the Chinese people themselves; it is being propped up solely by the fact of its possession of the historic capital of the country and its consequent recognition by the foreign Powers. I appeal to the Governments of the Friendly Powers to withdraw recognition from a *soi disant* Government which is avowedly not *de jure* and which is proving itself not even *de facto* and, in the same manner in which they recognised the Republic's Government formed by the National Assembly in 1913, accord recognition to this Government formed now by the same Assembly, as the only Government of the Republic.

Actuated by no desire of selfish gain but by the sole motive of serving the Republic to the best of their ability, the members of this Government represent those ideals and those principles which, if the Republic is to survive and take its rightful place in the Family of Nations, as they firmly believe she will, must necessarily triumph: viz., Liberalism, Constitutionalism, and Devotion to the Common Weal.

CANTON, 5th May 1921.

(Signed) SUN YAT-SEN.

The Constitutional Controversy

It will be seen that both the Peking and Canton Governments look to the Provisional Constitution, formulated in 1912, as their fundamental law. As regards, however, their ability to trace their legal title to existence back to that predicated source of political legitimacy, there is not much to be said for either government.

The Parliament which has sat in Peking since the second dissolution of the first Parliament, if it be judged from a strictly legal point of view, lacks a constitutional character, since it was elected under laws promulgated by a Council which, under the terms of the Provisional Constitution, had become *functus officio*, and, as rendering the situation at Peking still more unsatisfactory, President Hsu derives his sole right to office from election by this irregularly constituted body.¹

The only way, therefore, that the Peking Government can be held to have more than a *de facto* character is to admit frankly that in 1917, if not earlier, there occurred what must be legally viewed as a revolution, that is, that there was then a break in the constitutional continuity of the government, an

¹ The pages which immediately follow are substantially taken from an article contributed by the author to *The Far Eastern Review*, for November, 1918, under the title "The Constitutional Situation in China."

overthrow of the old constitutional régime and the beginning of a new one, under the same constitution, to be sure, but with a new government which does not trace its legal title back through the government which preceded it. Only thus can one truly say that the present Peking Government is *de jure* as well as *de facto*.

But how is it with the government which has been established at Canton? In Canton we have a Parliament which can trace its constitutional lineage back to the revolution of 1911 only if it can establish the fact that it is composed of persons who can make good their legal claim to be members of the old Parliament, and prove that there are enough of these members to constitute a quorum sufficient to enable them to exercise all of the powers vested in the Parliament by the Provisional Constitution.

It is commonly reported that such a quorum was obtained at Canton in 1918. The writer of this study is not able to say, however, just how many of the persons thus in attendance were the same persons or their "alternates" who were originally elected to Parliament in 1913. And, in any case, with regard to the "alternates" none of them could legally serve unless the seats occupied by them had been made vacant by the death, formal resignation or expulsion by the Parliament itself in accordance with the provisions of the Law of Parliament of September 27, 1913. In order, then, to determine surely whether there gathered at Canton a genuine quorum of the members of the old Parliament it would be necessary to scrutinize carefully the claims to membership of each of the persons now constituting the Canton body. In 1921, when Sun Yat-sen was elected President, it is reported that only one hundred and thirty members of Parliament out of a total of nine hundred were present.

Granting, however, for purposes of argument, that the assembly at Canton included a quorum of the persons who were members of the old Parliament, there is one fundamental legal objection to admitting the claim of any of these gentlemen that they are still members of Parliament. They were elected in 1913, the members of the Lower House for three years, one third of the members of the Upper House for two

years, another third for four years, and the other third for six years. Therefore by the effluxion of time the terms of all these parliamentarians have come to an end.

The rejoinder that has been made to this obvious objection is that the periods of time during which the Parliament had been illegally prevented from sitting should not be counted. The sur-rejoinder to this is that whatever may be the equities of the case the claim is without legal weight. Not only can no precedent in the public law of other constitutionally governed countries be cited in support of it, but it contains within itself logically contradictory propositions. It asserts in one breath that the dissolutions of the Parliament by Yuan and Li were wholly illegal, but in the next breath declares that these mandates of dissolution were legally effective to bring the sittings of the Parliaments to a close, so that, for the time being, the terms of the members would not continue to run their chronological course. These Canton Constitutionals, while denying that there was a legal warrant for a Presidential mandate shortening the terms of members of Parliament as fixed by law, assert, nevertheless, that the mandates were effective to lengthen those terms.

It has already been admitted that these mandates of dissolution were without constitutional warrant, and, this being so, what the members of Parliament should have done (that is, should have done from the legal point of view) was to have disregarded them and continued their sittings, as they had a right to do. Having failed thus to exercise their undoubted rights, they can not now say, with any show of legal reason, that their terms of office should, for the time being, have ceased to run.

The writer does not know of any instance in any other country in which the precise proposition asserted by the members of the Canton Parliament has been set up. It is therefore impossible to cite a case in which it has been denied. But there are cases almost beyond number in which the right of individuals to sit in legislative chambers has been protested. Contested election cases occur in practically every Congress of the United States, and not infrequently it has happened that the successful contestant has not been given his seat until his

term has nearly expired. But never has it been thought reasonable to raise the point that because these persons have thus been prevented from exercising their membership rights, therefore their terms should be deemed to be *ipso facto* extended.

Or, consider the matter from another standpoint. The members of the Canton body make their claim to continued membership in the old Parliament as though it were a matter of purely personal right as between them and the executive branch of the government which ousted them from their seats. If there had been a contractual relation between these members and the executive, in the nature, say, of a lease, or of an agreement to grant a certain period of time for the carrying out of an undertaking, it might be arguable that if the one party were prevented from enjoying possession of the premises rented or of performing the agreed-upon work within the prescribed time by reason of illegal action upon the part of the other party, then the term of the lease or the period for the performance of the work should be extended. But in truth the actual situation in China is one that bears not even an analogy to this supposititious case. In the first place the matter is one of public and not of private law; and, in the second place, the Canton contention wholly ignores the fact that such right as members of any elected legislative chamber may be conceded to have arises by reason of the fact that they have received from their several constituencies a mandate to represent them for a prescribed length of time.

In other words, persons are elected to public office only that they may carry out the wishes of those who elect them, and, in order that the will of the electorate may be made continuously effective, legislative terms are commonly made comparatively short. The reason why the term of office of the members of the Lower House of the Chinese Parliament was fixed at three years was in order that at the end of each such period opportunity would be given to the people to express their will as to who should represent them for the next period. Thus, by electing or failing to elect former members the people could say whether or not they approved of the policies voiced by those members. But now, more than eight years after they were elected, the persons now constitut-

ing the Canton Assembly assert that they still have the right to voice the will of the people, in whom, as the Constitution says, the sovereignty of the state resides. If this contention were admitted it would logically follow that if there were an interregnum of thirty or even forty years, instead of six or eight years, the surviving members of Parliament would still have a right to put themselves forward without another election as the representatives of the people. In other words, because the President issued an illegal mandate, which was not disregarded by the Parliamentarians, it is now asserted by them that the right of the people each three years to speak their sovereign will at the polls was destroyed. The argument is absurd upon its face.

Although neither the Peking nor the Canton Parliament is a constitutional body if subjected to strict legal tests, all parties are agreed that the Provisional Constitution should continue to be recognized as the fundamental instrument of government, regarding it as they do as the only constitutional cable which prevents the Ship of State from being cast wholly adrift. In the meantime, though neither side has a good case, the country remains a prey to disorder and civil strife at the very time when it is most important that China should be in a condition of domestic peace and unity in order that she may fulfil her international obligations to her Allies, protect herself from infringements upon her independence, conserve her natural resources and develop her commercial and industrial interests.

A Possible Solution

The problem reduces itself to this: By what program and process can a régime be established which will be recognized as constitutional by both North and South?

Of course, if either side could be induced or compelled wholly to abandon its position and accept that of the other, the problem in its present aspects would be solved, although, as a merely academic proposition, political theorists might continue, by way of intellectual recreation, to dispute as to constitutional rights and wrongs of the past. It does not appear, however, to be within the realm of probability that either

side can be persuaded, or that, as a military proposition, it is practically possible to compel it to abandon wholly its present position. A compromise of some kind upon the constitutional question is therefore imperative.

One such compromise which has been suggested is that both the Canton and the Peking Parliaments should dissolve and a new Parliament be elected under the laws of 1912. This solution would undoubtedly come very near to meeting, if it did not actually meet, all the requirements of the Provisional Constitution, for there can be no question that these laws were valid when passed and that they have not since been legally abrogated. The new Parliament when convened would proceed to the election of a President—presumably Hsu Shih-chang—and thus the executive would also be placed upon a constitutional basis.

Satisfactory as this solution would be from a constitutional point of view, it presents the practical difficulty that it is a virtual concession by the Peking Government that it never had a legal basis—a concession which it is not reasonable to suppose the Peking Government can be induced to make.

If, then, one is to remain within the realm of what is reasonably possible of attainment, in China at least, search must be made for an arrangement which will more fully exhibit the elements of compromise, and yet result in a situation which can not be constitutionally questioned by either side. The plan which, to the writer's mind, will best satisfy these requirements is the following:

Let there be constituted a joint or conference committee composed of a small number of members from each of the Canton and Peking Parliaments, this committee to agree upon the terms of new laws for the organization and election of a new national Parliament, these laws thus agreed upon, to be enacted, without amendment, by both Parliaments, and, under them, a new Parliament to be elected, whereupon the Parliaments now sitting at Peking and Canton would go out of existence. Prior to this the Canton Parliament might elect Hsu Shih-chang as President of the Republic, or, after the convening of the new Parliament that body would elect Hsu to the Presidency.

Thus would be brought into existence a government the constitutionality of which neither side could or would be disposed to assail. Each side would, to be sure, remain free to assert that the new government derived its legality solely from the action of its own Parliament in enacting the laws under which it was constituted and that the approval of the other Parliament was, legally speaking, an act of supererogation; but this would not affect the constitutionality of the result. By this plan not only would there be brought into existence a government which all could look to as constitutional but it would have all the essentials of a genuine compromise. Each side would make exactly the same concession, each would play a precisely similar part in establishing the new government, and, what is possibly still more important to the Chinese mind, neither side would have to admit that, in the past, it had been constitutionally in the wrong.

International Significance of the Struggle between North and South

Thus far the contest in China between the North and the South has been discussed simply as a constitutional question. There remain to be considered certain bearings which the situation has upon the relations of China to the other powers.

It is to be pointed out, in the first place, that this civil discord has not been based upon any proposition that China should be divided into two states, each sovereign and with its own government. The contest has been wholly as to which of the two governments should be accepted by the Chinese people or recognized by the other nations as the legal government of all China. It is, indeed, a very significant fact that during these years of civil war, the proposition that China should be divided between the two contesting governments should not have been seriously agitated.¹

This is a very significant fact, for it gives the strongest testimony to the essential cultural unity of the Chinese people, to the existence of those psychological factors upon which

¹ It can not be said that the possibility of such a separation has never been raised, but it has never been even quasi-officially proposed by either side.

true nationalism is based. It is not to be denied, however, that there are characteristics of the southern Chinese which distinguish them from their northern countrymen. These have been interestingly discussed by Sih-Gung Cheng in his recent able volume, *Modern China: A Political Study*.¹

He points out that while the North has in the past been more liable to attack from barbarians beyond the great Wall, the South, free from these dangers, has been able to carry to a higher stage of development the characteristic literature and art of Cathay, although it was originally in the North that Chinese civilization began. Mr. Cheng continues:

During the Manchu reign, the South was subject to further influences, which did not affect the North. The Southern Chinese were born sailors filled with the spirit of adventure. Early in the seventeenth century, they came into contact with the Portuguese and the Spaniards, who were then the greatest seafaring peoples in the world. They imparted to the Southern Chinese foreign conceptions of a far wider range than those of the secluded North. Trade with aliens was viewed with suspicion and contempt by most people in the North, but practised in the South with enthusiasm. The nations of the South, among whom the Cantonese were the leading spirits, showed themselves adaptable to new situations and began to master the art of scientific navigation and the western method of commerce. To put the psychological difference between the peoples of the North and of the South in general terms, it may be said that the former excel in patience, in caution, and in deliberation, while the latter are unsurpassed in the spirit of adventure, in pushfulness, and in resource.²

A little later on, Mr. Cheng says:

Those of the South, especially the Cantonese, owing to their greater facilities for coming into contact with Europeans through travel and commerce, have been much more vividly impressed with the need of introducing Western methods into the Chinese political régime. The Cantonese were the first to go abroad to study in Western universities, and were the first to propagate revolutionary ideas and to organize revolutionary movements. . . . The North was by no means unresponsive to the introduction of reforms, and in fact, in the few years preceding the Revolution [of 1911], it had witnessed marvellous strides in modern industry and education, thanks to the exertions of several enlightened and capable Viceroys; but it had no faith in violence and bloodshed, which were characteristic of the Revolutionists.³

¹ SIH-GUNG CHENG, *Modern China: A Political Study* (Oxford, 1919).

² *Ibid.*, p. 30.

³ *Ibid.*, p. 33.

Still later, Mr. Cheng, while recognizing the possibility of a break-up of China into several pieces, if present conditions are not corrected, nevertheless says:

It should be made clear that the struggle between North and South is, strictly speaking, not territorial. Many from the South are in the service of the North, and many from the North are fighting for the Southern cause. In the second place, the bulk of the people, who take no direct part in politics, cherish no animosity among themselves. As has already been mentioned, the same language and the same civilization have united them as one people. They inherit the same historical traditions, believe in the same creeds, and cherish the same aspirations. The barrier created by the difference in dialect has already begun to be pulled down, as a result of the freer intercourse of the people, who can now travel between the North and the South with greater comfort and ease, and thus have greater facilities for learning each other's dialects. In the National Assembly, in the law courts, and in the schools of higher grades, the Metropolitan mandarin dialect has been adopted as the official means of verbal communication. It is a dialect intelligible to four-fifths of the population, and the remaining fifth can pick it up without much difficulty. . . .

The North may be more conservative and the South more radical, but no party in either of them—not even the Militarists and the Constitutionlists themselves—has ever intended to separate one from the other and to divide the country into two Empires or Republics. They wish well for the country as a whole, and on fundamental questions such as reorganization of national finance and industrial development they are at one. They only differ in their methods of attaining the same end. . . .

The whole trouble in China between the North and the South is the work of a few who are not supported at all by popular wishes or voice.¹

A second observation to be made with regard to the bearing of China's present civil strife upon her relation to foreign powers is the well-established principle of international law that "recognition" of one government by other governments as the political agency with which they will deal is not determined by the ability of the recognized government to show that it has a good legal title to existence when tested by the existing constitutional law of the country concerned. Nations in their dealings with one another do not concern themselves with its refinements or even the broad principles of the various systems of constitutional jurisprudence prevailing in the several countries. To do so would compel them to

¹ SHI-GUNG CHENG, *op. cit.*, p. 41.

take sides in the many constitutional disputes which are constantly arising in nearly all states. Therefore, they assume a purely "realistic" position and say to each other: "We are concerned only with the question whether a given government, claiming to represent another state or its people, has, in fact, the power to fulfil towards ourselves the obligations which international law imposes upon all political bodies claiming existence as independent members of the family of nations."

It is true that a government which is able to fulfil these conditions can be said to have a right to recognition upon the part of other states, but it is none the less true that each of those other states has also the right to determine for itself whether in fact the requirements for recognition are met by the requesting government, and, furthermore, the decision as to this by one state, while it may have persuasive force upon other states, in no way controls their judgments whether of fact or of policy.

Recognition

The question of "recognition" becomes an especially difficult one when the request for recognition is made by a government which has established itself in opposition to one which has previously had recognition by the governments to which this request is addressed. It does not need to be pointed out that, in such a case, to yield recognition is an openly unfriendly act towards the old government. Prudence and good policy therefore dictate that states should not transfer their recognition from one government to another until it is placed beyond all reasonable doubt that the new government has become firmly established and that there is little likelihood that the old government will be able to regain, within a reasonable time, its effective authority over the areas for the time being under the control of opposition government which has established itself.

The international law authorities are very clear upon this point. Thus, Oppenheim¹ says:

Here the question is material whether a new State has really already safely and permanently established itself or only makes efforts to this end without having already succeeded. That in

¹ L. OPPENHEIM, *International Law*, 2d ed. (London, 1912), vol. I, p. 119-120.

every case of civil war a foreign State can recognize the insurgents as a belligerent Power if they succeed in keeping a part of the country in their hands and set up a Government of their own, there is no doubt. But between this recognition as a belligerent Power and the recognition of these insurgents and their part of the country as a new State, there is a broad and deep gulf. And the question is precisely at what exact time recognition of a new State may be given instead of the recognition as a belligerent Power. For an untimely and precipitate recognition as a new State is a violation of the dignity of the mother-State, to which the latter need not patiently submit.

In spite of the importance of the question, no hard-and-fast rule can be laid down as regards the time when it can be said that a State created by revolution has established itself safely and permanently. The characteristic of such safe and permanent establishment may be found either in the fact that the revolutionary State has utterly defeated the mother-State or that the mother-State has ceased to make efforts to subdue the revolutionary State, or even that the mother-State, in spite of its efforts, is apparently incapable of bringing the revolutionary back under its sway. Of course, as soon as the mother-State itself recognizes the new State, there is no reason for other States to withhold any longer their recognition, although they have even then no legal obligation to grant it.

In the present case of China we do not have an instance of the attempt of one part of the people and territory of the state to separate themselves from their old sovereignty and to unite under a new and independent state, but of one government asserting its right to represent and speak for the entire country, and therefore denying that any recognition whatever should be given by the other powers to the old government. The principles governing the situation are, however, exactly the same as those applying when the government claiming recognition asserts jurisdiction only over a portion of the territory of the mother State.

As regards the government with its headquarters at Canton, with Sun Yat-sen as its chief, it is to be observed, first of all, that it, itself, makes no claim to the possession of effective control over more than a portion of the total area of China, and that it has, in fact, given no indubitable evidence that it has effective control over even those provinces which it claims recognize its authority.

In the second place, there is no evidence that, in the near future, it is likely to be able to extend its effective authority over the other provinces of China.

In the third place, the now internationally recognized government of China, with its capital at Peking, has not ceased its efforts to overthrow such authority as the Canton Government now possesses.

In the fourth place, no conditions have as yet arisen which make it practically impossible for the other powers to continue to recognize the government at Peking as the representative of the Chinese State. That is to say, the rights of these foreign powers and of their nationals in China have been respected and protected by it. It would seem, then, that until repeated and serious instances arise in which it is apparent that in fact rather than in mere possibility the Peking Government is unable to fulfil its international obligations, the other powers can find no justification, under existing established principles of international law and practice, for transferring their recognition from the government at Peking to that claiming to exist with its headquarters at Canton.

It none the less remains true that a very serious problem is presented by the failure of the Peking Government during the last nine years to maintain a subordination of the military forces to the civil authorities, to obtain adequate revenues except by means of foreign and domestic loans, to promote educational and industrial progress in the provinces, and, in general, to conform to the requirements of the Provisional Constitution upon which it bases its legal right to existence. Except for the fact that the Chinese people have in the past been accustomed to a minimum amount of political and legal control in the ordinary affairs of life, the situation during recent years would have been more serious than in fact it has been. But, at best, it is one that must be corrected if China is to retain her status as an independent member of the family of nations. It therefore becomes of great importance to ascertain what have been the causes of China's present political troubles and thus to be in a position to apply remedial measures. Especially is it desirable to determine which of these causes the Chinese may be expected to be able themselves to remove, and which, if any, require outside aid for their correction.

Causes Hindering Constitutional Development in China

There are some who have been inclined to ascribe all or most of China's troubles to the overthrow of the monarchy and the establishment of a republic in its place. This, however, is by no means just. It is undoubtedly true that, as compared with a strong monarchy, a republican form of government is a more complicated political mechanism, and, viewed simply from the executive or administrative point of view, is not, ordinarily, as efficient and smooth working in its operation. The merits of the republican form of government lie in other directions, and particularly in the stimulating and educative influence it exerts upon the governed. But because a republican form of government is likely to be weak upon the executive side, it is especially important that those who frame its constitution should take care that its executive powers should not be unnecessarily weakened. This requirement those who drafted the instrument of government under which the Chinese Republic has operated since 1912 did not sufficiently appreciate, and to this fact has been due much of the trouble which that government has since experienced. In other words, the political troubles with which the Chinese have since been afflicted have been due not so much to a general lack of capacity to maintain a self-governing or representative scheme of political control as that they have been attempting to govern themselves under an essentially defective constitution. This point is of sufficient importance to be dwelt upon somewhat.

Lack of Executive Energy

It is of the essence of republican government that the executive branch should be brought under the control of the representatives of the people, that is, that those who possess executive authority should be made politically, as well as legally, responsible for the manner in which they exercise the powers placed in their hands. But it is a fatal error if the danger of executive oppression be avoided, not by subjecting those in executive authority to political and legal control, but by weakening the executive power itself or by vesting its exercise in the popularly elected chambers. If the executive

power itself is weakened, it becomes inadequate for the efficient performance of the essential tasks of government; if it be vested in the legislature, it is placed in a body which, by its very composition and the motives which control it, is not qualified to exercise it. If the attempt be made to divide the executive leadership between the parliament and the executive, both weakness and discord are created.

Stated in other words, the proposition is this: It is as necessary in a republic as it is in a monarchy that the executive branch of the government should be clothed with authority adequate for the performance of all the tasks likely to be laid upon the government, whether these be the tasks of war or of peace. In short, the difference between a republic and a more or less autocratic monarchy is not that in the one case the executive is without powers which in the other case he is recognized to have, but that in the republic orderly means exist whereby the chief executive may be held politically responsible for the manner in which he exercises his powers.

This, then, is the problem which every republic must solve. It must provide a strong executive authority and leadership, but must hold those who possess it politically as well as legally responsible for the manner in which they exercise it. This means that harmonious working relations between the legislative and executive branches must be developed and maintained.

If one examines the course of constitutional development in Great Britain it is seen that little attempt has ever been made to diminish the executive powers of the Crown. These royal powers are now almost as extensive as they were in the days of King John. But, step by step, the principle has been established that these powers may be exercised only upon the advice of ministers who are held to a personal and legal responsibility for the acts which they advise and to a political responsibility to the freely elected representatives of the people. The political genius of the British people has never been so conspicuously demonstrated as in this sustained refusal to weaken the executive powers of their government.

In France, the President possesses, under the Constitution, very broad executive powers, but in practice is able to exer-

cise them only at the dictation of his Ministers, who, as in England, are held legally responsible before the courts and politically responsible by the Parliament.

In the United States, the President is in a much more independent position, as regards the exercise of his considerable Constitutional powers, than is the British King or the French President. He is, however, subject to impeachment by the Lower House of Congress and to trial thereupon in the Senate, and to removal from office if the charges against him are sustained. And, it may be observed, this impeachment may be founded upon acts which are deemed politically improper as well as upon those which are of an illegal or criminal character. After removal from office the President may be proceeded against in the courts for any illegal acts of which he may have been guilty. In practice, however, the political and legal responsibility that is enforcible upon the American President by impeachment proceedings is one that can be used only under extraordinary circumstances. The real political responsibility under which he acts is that created by the fact that he is an official elected by the people. He, therefore, feels that he is their agent and under a moral obligation to bend his policies to their wishes. Further emphasizing this feeling of moral responsibility is the fact that he is the recognized head of a strongly organized national political party: he owes his nomination to its choice and his election to its efforts. To this same party, or to its rivals, the members of the national legislature owe their nomination and election. And thus, through the operation of these great political parties, the executive and legislative branches of the government are brought into a working relation for which the written Constitution itself makes no adequate provision.

But how has it been in China with reference to the foregoing matters?

It was an unfortunate fact that the Provisional Constitution which was hurriedly drawn up late in the year 1911 and promulgated at Peking three months later had its general character determined in no inconsiderable measure by the fact that a lively fear was felt that Yuan Shih-kai, who it was known would be the first President, could not be trusted to

abide conscientiously by republican ideals. It was, therefore, felt necessary to keep within the hands of the Parliament modes of controlling executive action which, possibly, would not have been deemed necessary had a greater confidence been felt in the political intentions of President Yuan. In other words, the fatal error was made of attempting to avoid the danger of executive autocracy, not by devising means for imposing political or legal responsibility upon the President for acts that he might commit, but by making it constitutionally impossible for him to take essential executive action without first obtaining the approval of the Parliament—which approval it was often impossible to obtain. Furthermore, it became apparent that it was the intention of the Parliament to perpetuate this type of government in the permanent Constitution which it was authorized to draft and promulgate.

No one with any degree of political intelligence could expect satisfactory results from such a government as this, whose chief characteristic was not the energy and efficiency which it made provision for, but the checks which it imposed upon executive action. Had the Provisional Constitution been permitted to operate as it was intended to operate, that is, had Yuan been willing to submit to the legislative control for which the Constitution made provision, the result would have been that China would have had a government without executive energy or leadership. In fact, the Parliament proved itself unable efficiently to exercise even those powers properly belonging to a legislative body. But had all its members been skilled statesmen, it could not have redeemed the government from failure.

As is well known, Yuan Shih-kai was not willing to abide by the limitations which the Provisional Constitution placed upon the exercise of executive powers. He first abolished the Parliament and then the Provisional Constitution itself, replacing it with an instrument according to which the Parliament was placed in the position which, according to his view, it should occupy. But, even with these increased powers, he was not satisfied but sought to reestablish the monarchy and to mount the Imperial throne. With his death the constitutional changes which Yuan had introduced were canceled,

the Provisional Constitution revived and the old Parliament again convened.

In the new President, Li-Yuan-hung, the Parliament found an executive who did not appear anxious to escape from the control which it sought to exercise. The result was that the government as a whole lost its controlling authority in the country. The President was unable to act with energy because the Parliament was unwilling to give him a free hand. The Parliament was unable to do anything because of its size and composition. At no one time was it possible to obtain even a complete Cabinet. The appointment of the ministers was in the hands of the President but subject to the approval of the Parliament—an approval which often could not be obtained. No legislation whatever, of an important character, was enacted. Sitting upon alternate days (or rather upon as many alternate days as it was possible to obtain a quorum), the Parliament spent six or more months upon the revision of the draft of a Permanent Constitution, but was unable to come to an agreement upon the more important and controversial points. No serious attempt was made to control by law the expenditures of public moneys. Thus, while the executive found its hands tied if it wished to act in a constitutional manner, the Parliament upon its part found itself unable, as a practical proposition, to perform the duties laid upon it.

In the meantime the military leaders throughout the country, fully aware of the paralysis which had seized the government, took things into their own hands and have since supplied whatever real coercive force has existed in China. In June, 1917, they brought such pressure to bear upon President Li that he felt compelled, against his individual will and in violation of his constitutional scruples, to dissolve the Parliament. A few days later came the short-lived attempt of Chang Hsun to reestablish the monarchy, and the withdrawal of Li from the Presidency.

Since that time matters have gone from bad to worse. Not only has the independence of the military commanders from control by the civil authorities been, if possible, even more pronounced, but the country has been divided into two war-

ring factions. In actual fact, however, the situation is even worse than this. If there had been substituted a unified military government in the North or in the South or South-west, it would have been bad enough. But what actually exists is as many centers of control as there are military "tuchuns." Each of these has been a rule to himself, actuated by his own individual interests, so that the politics of China during the last few years has consisted almost wholly of coalitions or controversies between these military leaders. There has been convened at Peking a Parliament elected under laws enacted by a body which had no constitutional status as tested by the Provisional Constitution which is supposed to be in force, but the President and the Cabinet have paid practically no attention to this body. They have not referred their policies to it for approval nor have they asked its consent for the expenditures of public moneys or the contracting of foreign loans. Nor has the Parliament itself made any serious effort to have its rights recognized. In fact, it has held only occasional sessions.

This is the present situation. What is the escape from it?

The adjustment of the dispute between the North and the South will, of course, be of great advantage, and it is an indispensable step before anything else can be done. But it will not, in itself, tend to correct the two fatal defects in the government—disregard of legal processes and lack of executive energy and leadership.

Lack of Political Leadership

It is often remarked as a matter of surprise as well as of lament that present-day China seems to be unable to produce strong national leaders. The present writer is strongly convinced that the reason for this most unfortunate sterility is due not to any defect in Chinese mentality or character, but because the political régime has been such as to discourage, if not actually to prevent, the entrance of able and upright men into public life. There is truth in the statement that it is more important to obtain good public officials than it is to perfect the machinery of government (in the past this has been the dominant principle in Chinese politics), but it is

equally true that whether strong and upright men will or will not be drawn into public service depends in very large measure upon how that government is organized. Public offices are attractive to efficient and forceful men only when they offer opportunity for the exercise of power and influence. Mere salary and titular distinctions are not sufficient. Here, then, we have another compelling reason why a popular government should be so organized and operated as to open the way to true political leadership.

In a memorandum which the present writer prepared and submitted, in 1917, to the Chinese Government in his then capacity as Constitutional Adviser to that government, he said:

It is the opinion of the writer that, with the possible exception of financial aid, the most pressing need of China is political leadership. By this I mean the establishment of some organ of government or the development of some constitutional practice which will permit the expression of definite policies of state upon which decisive legislative action can be obtained.

It does not need to be pointed out that although the Parliament has now been in continuous session for more than three months not a single piece of important legislation has received the approval of both houses and been signed or promulgated by the President.

This has not been wholly due to the political incapacity of the Parliament. In considerable measure it has been the result of the fact that it has not had the aid of a directing control such as that which is exercised in all the legislatures of the great powers of the Western world. In America this direction is supplied by the highly organized political parties speaking through their platforms and their party leaders in Congress, and, especially, through the President and his Cabinet advisers. The Speaker, the floor leaders, the Committee on Rules and the Caucus make it possible for the political party which is in power to control the time of the Houses of Congress, to indicate what measures shall be considered, and how long, and thus to secure reasonably prompt action upon those policies to which the party has been pledged, or which have been urged for legislative approval by the President, speaking as the head of his party, or, in nonpartizan matters, for the whole people. In the recent so-called eight-hour railway law, action upon a most important measure was secured within a very few hours. The general trend in the United States as well as in the governments of its member States has been towards the development of means whereby decisive controlling leadership may be exercised. And this development has met with approval by all those who have been qualified to form an intelligent opinion; for its necessity, if the requirements of modern government are to be met, have been recognized.

In England the development of political leadership has been still more marked. At the present time the Cabinet initiates all important legislation and has absolute control of the time of the House of Commons. And it is recognized by all students of government that the chief reason why parliamentary institutions have not worked as well in France as they have in England is because the French Parliament has not been willing to give to its leaders that directing and controlling authority which is possessed and exercised by English Cabinet ministers. The English Cabinet not only itself initiates all important measures which are considered in the Parliament, but with reference to many of them (and especially with reference to financial proposals) dictates to what extent amendments to them shall be accepted.

The reason why the English Cabinet has been able to obtain this great influence and control over its own creator, the House of Commons, is due to the fact that it always acts as a unit and has the power to dissolve the House and order a new election if any of the proposals to which it attaches importance are not approved. In former times it was usual for a defeated ministry to resign and thus give opportunity for the formation of a new ministry drawn from the "Opposition." For a good many years, however, the uniform practice has been for a defeated ministry to advise the King to dissolve the House—an advice which he is practically compelled to take. The result has been that the influence of the Ministers over the members of the House of Commons has been greatly increased, because they know that if they defeat the ministry the immediate result will be that they will lose their seats in the House and be subjected to the expense and worry and the very doubtful result of a new election. This, of course, does not mean that the government in power is able to obtain the support of those who are in radical party opposition to it; but it does mean that, under all ordinary circumstances, it is able to count confidently upon the support of the members of its own political party.

It should also be mentioned that the influence of the British Cabinet is still further enhanced by the fact that its members are also members of Parliament and devote most of their time to their parliamentary duties. They are in constant attendance at the sittings of Parliament and are always the leaders in the debates and in the work of the committees. This is made possible to them by the fact that permanent officials exist for the direction of the work of the great executive departments of which the Cabinet ministers are the titular heads.

Still further, it should be pointed out that the Cabinet not only presents a united front before Parliament (whatever may be the personal differences expressed at the secret Cabinet meetings), but, as the executive branch of government, they are bound together as a single administrative whole. The chief agency through which this integration is effected is the "Treasury," which is not, in itself, an administrative or "spending" department (except to a slight extent) but acts rather as an organ for coordinating and controlling the acts, expenditures and organization of the other great depart-

ments through which the executive work of the government is carried on. This centralizing and unifying influence of the English Treasury is one that is worth the study of all the other governments of the world, but it can not be further described in this place.

The foregoing observations have been made, not in order to write a political essay, but to indicate some of the reasons why thus far republican government in China has not been as effective as it should and could be.

At the present time the Cabinet is not a unified and integrated body, and during the present session of Parliament none of its members have been members of Parliament, nor have they attended its sessions except formally to make certain nominations or, upon request, to make, in very general terms, certain explanations asked of them. The Cabinet, so far as I know, has not presented to Parliament a single legislative proposal, and, indeed, it is not now so organized that, as a single body, it can be said to stand unanimously for any given public policy. It has made no reports to Parliament regarding executive acts, past or proposed, and it has not even framed and presented a financial budget for the coming fiscal year.

Discord between President, Cabinet and Parliament

Mr. R. L. O. Bevan, who is well known in China for his published articles dealing with constitutional questions, has the following to say with regard to the articles of the Provisional Constitution which deal with the President, his Ministers and their relation to the Parliament:

The Prime Ministers and the other ministers of the various departments form a cabinet. Article 44 declares that they shall assist the Provisional President and share his responsibility, and all bills proposed and laws and orders promulgated by the President must be countersigned by a minister or ministers. They have the right to attend and speak in the Assembly [Parliament], and if impeached they are to be removed from office by the President. The President also has power to appoint or remove a minister, but in either case his action must be approved by the Assembly. As far as appears from the text of the Constitution, the ministers have a double responsibility, for they are responsible both to the President and to the Assembly. A peculiar situation is thus created. The President is the actual executive, and he is not responsible to the Assembly, for the Assembly's control over him is actually nothing; but he must act through his ministers or at least with their concurrence, and they are not fully responsible to him, nor has the Assembly a sole and complete control over them. There could hardly have been invented a system of administration in which there could be more scope for hindering and delaying both the legislative and the administrative machine. Checks that are not real checks and responsibility that is a double or only a half responsibility can hardly fail to bring about an utter want of harmony if there should happen

to be a combination of President, Cabinet and Parliament each eager to obtain the lion's share of political influence and government control. There is not only the possibility of a struggle between the legislature and the executive, but there is the probability of a dispute for the real power of the executive between the President and the Cabinet. The political history of the past five years [1913-1918] has afforded examples of both of these disturbing conditions. The first two years of the Republic were taken up almost entirely with the keen fight between the President and the people's representatives; while the year's political doings after Yuan's death [1916] was further complicated with the still undecided question whether the President or his Cabinet Ministers were the real and responsible executive. The possibilities as one or another of the varying combinations come into operation are many. The motion of a system of three independent bodies in a space is one of the difficult problems of mathematics and astronomy; the probable action of three more or less independent bodies in the political arena would not be easy to foretell. Given a strong President and a subservient Assembly, the President would be nearly despotic; given a strong Assembly and a weak President, the Assembly would rule; but given both President and Assembly strong and out of harmony, and complicate the problem with a Cabinet uncertain of its place in the Constitution, the chances of deadlock would, to say the least, seem to be many.¹

To dwell further upon the inherent defects of the Constitution under which China has been endeavoring to conduct her republican experiment would carry us too far into the general field of the science of government. There are other and serious defects which have not been mentioned, but sufficient has been said to show that, because of the character of her Constitution, the Republic of China has not had what may be called a fair chance of success, and that with the correction of these defects, which are corrigible, better results can be expected in the future.

Foreign Interference

A second and very important respect in which the problem of republican government in China has been made more difficult than its inherent nature would make it has been the extent to which China has suffered from foreign interference.

The fact that China has been obliged to acquiesce in the exercise of extraterritorial jurisdiction throughout her entire

¹ "China's Constitutions," *The Chinese Social and Political Science Review*, June, 1918. This was one of four articles contributed by Mr. Bevan to the *Review*, dealing with constitutional developments in China since 1898.

area, necessary though some of it may have been under existing circumstances, has greatly complicated her political problem. The rigid restriction upon her power to fix her maritime customs at a rate that would yield her a reasonable revenue and to classify commodities according to the economic needs of the country, and the excessive indemnities fastened upon her by the Boxer Protocol, have been potent in this respect, but especially has the operation throughout her limits of the principle of extraterritoriality been politically debilitating. Sir Robert Hart,¹ whose judgment is certainly entitled to weight, says:

The "Extraterritoriality" stipulation may have relieved the native official of some troublesome duties, but it has always been felt to be offensive and humiliating, and has ever a disintegrating effect, leading the people on one hand to despise their own Government and officials, and on the other to envy and dislike the foreigner withdrawn from native control.

But even more serious than these limitations upon China's administrative autonomy have been the instances of direct interference from outside. In this respect Japan would appear to have been the chief offender, as witnessed in her Twenty-One Demands, in her general conduct in Shantung since her occupation of Kiaochow, and in her loans, which, it is charged, have, in many cases, served as financial fuel to the flames of civil war. However, this general question as to the manner in which China has been treated by the foreign powers is one that falls outside the scope of the present study.

PREPAREDNESS OF THE CHINESE FOR REPUBLICAN GOVERNMENT

From the paragraphs which have preceded, it has, then, appeared that in two important respects China's failure to prosper politically under her republican form of government has been due to causes that were preventable and which can be removed. In order, however, that the analysis of the present situation may be complete, it is necessary to attempt the more difficult task of determining in how far the Chinese people, by their conceptions of law and government, were

¹ *"These from the Land of Sinim,"* p. 66.

prepared for the successful execution of the self-governing task which they set themselves when, in 1912, they replaced their former monarchy with a republican form of government.

This task, it will be observed, was a double one, in that the new government was to be not only one resting upon public opinion and operated through representative institutions, but one constitutional in character. In other words, it was to be a government the officials of which should exercise only the powers given them by the fundamental instrument of government and in the manner therein provided.

Chinese a Democratic People

One often meets the statement that the Chinese were prepared for republican rule by reason of the fact that for many centuries they had been socially and industrially a democratic people, and that they had been accustomed to govern themselves in their villages and other local units. The statement of fact is, as we have seen, true, but the inference is not so certain. It is true that, socially and industrially, the Chinese people have for many years been one of the most democratic peoples of the world. The groupings of the Chinese into scholars, farmers, artisans, merchants and soldiers or servants (these two classes being alternatively used), though often spoken of as castes and ranged in order of merit or distinction, never were of a rigid character, and certainly during recent years one finds few traces of hard-and-fast social, political or industrial stratification. Pride of ancestry there has been, but probably nowhere on earth has the career of the child been less determined by the status of the parents vouchsafed him by Providence. It has always been true that if a boy has natural talents and industry there are few artificial or conventional barriers to hinder him from gaining the esteem of his community and rising from the lowest to the very highest positions of profit and power. And in this connection it is important to note that the especial means, until the revolution of 1911 at least, whereby this progress could be achieved was by establishing a reputation for scholarship. Based upon the learning thus displayed, appointments to the highest positions in the government were made.

It is true that opportunities for an advanced education, as that term was understood by the Chinese, were never abundant, but they were never wholly absent, and such was the popular esteem for learning and the degree of family and purely local pride that relatives or the inhabitants of villages or districts were always glad to provide by common contributions, if other sources were lacking, the means whereby an opportunity for continued study could be furnished youths who showed especial promise as scholars. And when the youths thus aided succeeded in obtaining a high standing in the examinations set by the Central Government, their local districts as well as their immediate families felt themselves highly honored.

In outward social and official life conventions have been of a highly elaborate and formalistic character, and great insistence upon their observance has been shown. These rules of conduct have been founded upon the deference conceived to be due by the son to the father, and of the political inferior to the political superior. But this deference has been accorded to age and personal merit and to acknowledged authority, rather than to a feeling of servile subjection. It has thus not involved any considerable loss of personal dignity and self-respect upon the part of the son or inferior, although it has been doubtless influential in repressing individual initiative and effort.

In China, as in all other countries, wealth has been greatly desired and has necessarily carried with it a certain amount of social influence and made easier political preferment. But even in this respect the Chinese have been a democratic people, for there has not developed among them so sharp a dividing line between the employer and the wage earner as has been created in the industrialized Western world. It is then to be conceded that, viewed socially and industrially, the Chinese people have been, since early times, a conspicuously democratic people.

Self-Government in China

It is also true that no matter how far back we go in point of time, we find the great mass of the Chinese people self-governing in the sense that they have controlled their own local affairs by agencies self-instituted and self-maintained.

The Chinese people are still largely in the patriarchal stage of social and political development. This means that the heads of families are possessed of great powers, in some cases even of life and death, over the members of their families, and through an exercise of the authority thus possessed are settled most of the disputes between individuals or between families which in more politically developed countries are taken cognizance of by the civil or criminal law and determined in state organized and administered tribunals.

Supplementing the control thus exercised by the patriarchs is that furnished in the villages by the so-called "village elders." These persons, as has been earlier pointed out, are not formally elected by those who recognize their rulership, but owe their authority to the fact that they have established for themselves a reputation for integrity and good judgment. To these elders, thus selected by a more or less tacit general consent, are submitted for settlement practically all the commercial affairs which do not fall within the sphere of patriarchal control.

Finally, as regards the management of purely commercial matters, the Chinese very early developed guilds which have exercised and still exercise a remarkably efficient control over their respective members. Though there has been no legal obligation upon the part of individual traders to join these cooperative societies, it has been practically impossible for them to do business successfully without doing so, and membership has always carried with it the obligation to submit disputes between members regarding commercial matters for adjudication by the guild authorities before resorting to the politically established courts of law.

Chinese Reasonableness

In addition to the high esteem in which learning has been held throughout China, another national characteristic deserves emphasis. This is the peculiarly high value which the Chinese have always attached to what may be termed good common sense and fairmindedness. This has led them to respect the character and submit to the judgments of persons possessing these qualities irrespective of their wealth or an-

cestry or political position. This reasonableness and sense of fairness, which impresses every foreigner who studies the Chinese mind, explains many of their social and political practices. Especially it plays a part in explaining the extent to which the reasonableness of the precepts embodied in laws has been relied upon to secure obedience to them. Thus we find official instructions couched in hortatory or argumentative rather than mandatory terms and as stating an obligation of morals or a principle of reason rather than as stating a general rule of conduct conformity to which will, if necessary, be compelled by force exerted by the authority issuing it.

This characteristic of Chinese law as a "rule of reason" (to borrow the language of the American Supreme Court) is fundamental to all Chinese philosophy. In the writings in which that philosophy is embodied we find few if any passages in which enters the idea of a superhuman personal being who, as governor of the universe, dictates the sequences of cause and effect that are observable in the physical world, or who as lawgiver dictates the rules that are to guide the conduct of men. Instead of this we find the conception of an order or harmony that is inherent or immanent in the universe, impersonal in character, but commanding respect and reverence by reason of the fact that it supplies an order that gives system and meaning to the outward world and rationality to the affairs and experiences of the beings that live upon it. It thus lays the basis for a rational cosmology as well as a transcendent validity to the precepts of social and political life.

It is of course true that with the Chinese, as well as with other races, social conventions and recognized moral obligations have owed their origin and continued acceptance to the fact that, speaking generally, they have satisfied the needs of the people. But when one asks the educated Chinese of the Old School from what source their compelling force is derived, the reply is not that they serve a utilitarian purpose or that they are founded upon divine fiats, nor upon political or ecclesiastical commands, but because they are in consonance with or dictated by that reason or immanent principle which

gives order and system and rationality to all things. There is thus no tendency whatever to view Confucius or Mencius or the other long-reverenced sages of China as having been more than human beings or as having been vouchsafed direct revelations of truth not granted to other men. They are regarded only as having been men of such keen intellect and of such high-minded purpose that they were able to gain a better understanding of the "law" than other teachers have been able to obtain. The supernatural element has been almost if not wholly lacking.

In truth, religion in a doctrinal or dogmatic sense has played a very small part in the lives and thought of the Chinese people. Most of them are indeed either nominal Buddhists or Taoists or both, and there are creeds as well as philosophies attached to these religions, but intellectual acceptance and reasoned belief in the doctrines declared by them have not been deemed essential either to sanctity in this world or salvation in the next. And, in fact, no Chinese, even an educated one, inquires into Buddhist or Taoist premises or theories except as a matter of purely intellectual interest or curiosity. Buddhist and Taoist priests throughout China are held in a deservedly low esteem by the people, and they and their temples are seldom resorted to except by the superstitious in order to propitiate evil spirits or to obtain assistance from the good spirits. To obtain aid, no personal merit is involved on the part of the petitioner beyond the payment of a sum of money; there is no inquiry on the part of the priests as to motives or as to beliefs of the applicant nor is consideration given to the nature of the undertaking for success in which the appeal is made.

In fine, then, the obedience of the Chinese people to the rules of accepted morality, as well as to the "mandates" of those in political authority, is founded upon a belief on their part in the inherent rationality of the precepts which they state. To them it is proper, in the very nature of things, that old age should be revered, that the authority of the paterfamilias should be recognized, and that the Emperor or President should rule until by an abuse of his powers it appears that he has exhausted the Mandate of Heaven.

Conception of Law

The Chinese have long been accustomed to so-called "mandates" issued by the Emperor or other high officials. These mandates, however, as shown by their preambles and general phraseology, have usually appealed to the reason and sense of justice of those to whom they have been addressed, rather than to the fact that they were orders emanating from a politically sovereign source, and, in very many cases, they have carried with them no administrative provisions for their enforcement. In result, these mandates have exhibited more the nature of exhortations or articles of advice than of real commands, and their language has been argumentative and persuasive as well as peremptory.

While we are thus dealing with this notion of law it is to be observed that the Chinese governments, local and provincial as well as Imperial, have never been legislative in character. Aside from the ordinance-making or mandate-issuing power of the executives there have been no formal lawmaking agencies. Custom has been the sole source of rules of conduct, and official mandates have been issued only to meet special emergencies or to provide the few administrative rules which have been required. At times there have been promulgated so-called codes, but these have been nothing more than compilations of customs and have never been issued in such official manner as to override opposing local customs and to prevent the development of differing rules of conduct.

Lacking this "positive or Austinian" conception of law, the Chinese during the long Imperial period never developed an independent judiciary, nor a body of judges specially learned in the law, nor even a class of trained professional lawyers. No attempt or appreciation was had of the need to place executive and adjudicatory powers in different hands, and, indeed, the two functions did not even have distinctive names. The village magistrate who was held responsible for all that happened within his village might be one of the *literati*, to be sure, but of no special knowledge of the rules to be applied in the cases brought before him for decision. He, however, had the aid—and suitors were compelled to purchase the

assistance—of “runners” to the court, who were supposed to know the manner in which litigation was to be prosecuted to a successful conclusion, but the assistance given by these “runners” usually partook more of the exercise of personal influence, or as go-betweens for the payment of bribes, than of advice as to the legal rights involved in the disputes.

Under circumstances such as these it is not strange that the Chinese did not, when they could help it, resort to their magistrates for the settlement of their personal disputes. And, indeed, such a resort was not always looked upon with approval by the higher authorities, as is testified to by the following decree of the Emperor Kang Hsi, issued early in the eighteenth century. He said:

The Emperor, considering the immense population of the empire, the minute division of landed property and the notoriously litigious character of the Chinese, is of opinion that lawsuits would tend to increase to a frightful extent, if people were not afraid of the courts, and if they felt confident of always finding in them ready and perfect justice. As man is apt to delude himself concerning his rights, contests would be interminable, and the half of the empire would not suffice to settle the lawsuits of the other half. I desire therefore, that those who have recourse to the courts, be treated without any pity, and in such a manner that they shall be disgusted with law, and tremble to appear before the judges. In this manner the evil will be cut up by the roots; the good citizens who may have difficulties among themselves will settle them like brothers by referring them to arbitration. As for those who are troublesome, obstinate and quarrelsome, let them be ruined in the law courts,—that is the justice that is due them.

In confirmation of what has been said with regard to the absence in Chinese thought of strictly juristic conception we have the following statement of one of the best known Sino-logues, E. H. Parker. He says:

In the whole history of China I have not come across a single case of civil jurisprudence in the strict sense, *i.e.*, where any abstract rights between individuals have been threshed out with considerations touching relevancy of evidence, damage to character, equitable set-off, nice definitions in contract, and so on.¹

In very truth, up to the most recent times the Chinese can not be said to have developed any considerable body of civil as distinguished from criminal law. For practically all

¹ E. H. PARKER, *China: Her History, Diplomacy and Commerce*, 2d ed., p. 327.

of their law, such as it was, was criminal in character. Thus judgments for the payment of money or the restoration of property practically all took the form of threats of physical punishments,—death, mutilation, flogging, banishment or imprisonment, if the money was not paid or the property handed over.

Attitude towards Central Government

Of prime importance in considering the preparedness of the Chinese for solving the modern problems of government is the fact brought out in the earlier account of the old Imperial system that by tradition and practice they had become habituated to the idea that their governments, central and local, should do little more than collect taxes and exercise police functions.¹

The facts which have already been mentioned serve in large measure to explain the remarkable extent to which, in times prior to the present century, the individual Chinese viewed all but his local governments as instrumentalities so far removed from his own life that almost no thought need be paid to them. The superior officials who owed their appointment to the Emperor were looked up to because they were in authority and had been selected from among the *literati*, and also because they usually had the dignity of considerable age. But there was little feeling upon the part of the great mass of the people that these officials should exercise their powers as a matter of public trust. On the contrary, it was universally recognized that these officials had an ethical right to use their powers for the advancement, within reasonable limits, of their own personal interests, and that they would be foolish and perhaps undutiful to their families and other dependents if they did not do so. That they were expected to prosper somewhat by the official positions was shown by the fact that they were paid very small salaries and yet were expected to live in considerable state and support many retainers. Also, not infrequently, they had paid considerable sums in order to obtain their short-term appointments.

¹ The construction of the Great Canal had for one of its primary purposes the provision of a means whereby contributions of grain might be brought to Peking.

All that the governed asked of their higher public officials was that they should not be so greedy of gain as to make it necessary to impose heavier burdens upon themselves than they had been accustomed to. In result there prevailed, and still prevails, in China an enormous amount of what is termed "squeeze" and which to the Western mind seems to be "graft" pure and simple. In fact, however, much of this "squeeze" can not properly be so described. It is sanctioned by public opinion, and, only when pushed beyond reasonable limits, is deemed oppressive by the people. At the same time it of course can not be denied that the system, even when kept within reasonable bounds, is inconsistent with any proper system of public financial administration under which all moneys collected or expended for the public service are duly authorized and accounted for. China can not hope to have an efficient system of public administration—one that will meet the standards imposed upon Western governments—until this system of "squeeze" is abolished, and proper systems of financial audit and control installed throughout all her administrative services.

Chinese not a Revolutionary People

Meadows, in his work which has been earlier referred to, says of the Chinese that "of all races that have attained to a certain degree of civilization the Chinese are the least revolutionary and the most rebellious." This generalization, in the sense in which it was intended to be taken, was, at least until the last few years, essentially true. That is to say, the centuries of the authentic history of the Chinese show that while they have frequently rebelled against those rulers whom they have deemed inefficient or tyrannical, and felt themselves justified in so doing by their prevailing political philosophy, they hardly ever attempted revolutionary changes in their governmental systems. In fact, until nearly the end of the nineteenth century, the Chinese people concerned themselves almost none at all with the manner in which their governments, central and local, were organized. Their interest was exclusively centered in the *personal* character of the rulers who held the reins of authority. In other words, a gov-

ernment was for them good or bad according to whether the emperor, the viceroy, the provincial governor or the district magistrate was or was not an able man and disposed to give due consideration to the interests of the people whom he ruled. And, as a result, when political disaffection developed it never took the form of a demand that the system of government should be changed, but that the obnoxious official should be displaced from power and his place taken by one who, it was hoped, would prove an abler administrator or at least one who would be less self-seeking and with a better regard for the welfare of those over whom his authority might extend. Thus Chinese history records almost numberless rebellions or insurrections, but none of them, prior to 1911, for the purpose of changing the established form of government. Even when an Imperial dynasty was overthrown no effort was made to impose conditions upon the new ruler as to the manner in which he should exercise his powers.

The fact that Chinese history records so many rebellions is in considerable part explained by a very important premise of Chinese political philosophy. This philosophy, as is well known, supported emphatically the rule of officials unrestrained by constitutional limitations. But still more fundamental was the principle that the one in authority was responsible for the welfare of his subjects, his political children, just as the father was assumed to be under a strong obligation to seek the prosperity and happiness of the members of his family. Even the occurrence of a devastating flood or famine or pestilence was held adequate ground for demanding the removal of a head official from office,—not so much because of a belief that the official in question had a control of natural agencies that would have enabled him to prevent these evils, but because the occurrence of these evils was deemed evidence of the fact that he had not the favor of Heaven. It was enough to the Chinese that they were not prospering under his rule. And, in principle, at least, the rulers from the Emperor down have been wont from early days to take upon their shoulders this responsibility. In countless proclamations (many of them dated since the establishment of the republic) this principle has been declared.

THE PRESENT OUTLOOK

The account which has been given of the political practices and concepts prevailing in China up to the end of the nineteenth century will undoubtedly tend to persuade the reader that the Chinese were in 1912 in many respects unprepared for establishment of the republic. To draw from this the conclusion that it would be wise for the Chinese to revert to monarchical institutions would, however, be a great error. Even if one should hold, as many intelligent Chinese as well as foreigners do hold, that better results might have followed if, in 1912, the Chinese had established a strictly constitutionally limited monarchy, as, for example, would have been instituted had the nineteen articles offered by the Manchus in the fall of 1911 been accepted, it by no means follows that, a republican form of government having been established and having been in operation for ten years, it would be expedient to return to the monarchy. If for no other reason, this would be undesirable because such a step would almost necessarily place in power the most reactionary, militaristic and unenlightened leaders in China.

In truth, the fact that the Chinese were to such an extent unprepared for solving the modern problems of government through self-governing institutions serves to increase the credit due them for what they have succeeded in achieving, and to demonstrate that they must possess the fundamental qualities—moral and intellectual—which qualify a people, if released from outside or accidental hindrances, to form and maintain a stable and prosperous political order. Thus, could China be freed from disturbing foreign interference or the fear of it, and be given a fair opportunity to correct the serious defects in her present constitution, and especially if she could receive friendly positive assistance from the powers of the character soon to be spoken of, there is every reason to believe that the present political evils which afflict her would be greatly lessened or even wholly removed, and rapid political and economic development result.

Dynamic Forces

If one attempt to look beneath the surface of things, as we have sought to do in the case of the old monarchial régime,

forces are found operating which tend greatly to increase one's optimism regarding China's political future.

In the first place, the Chinese people with surprising unanimity have definitely abandoned their former hostility towards and contempt for things foreign. In the Boxer movement of 1900 were gathered together the anti-foreign forces, and with their overthrow there seemed to disappear, for good and all, the hope that the Chinese might escape from the control of Western ideas. And, during the twenty years which have since elapsed, this hopelessness of escape has been, in very large measure, replaced by an affirmative belief in the value of Western methods of government and Western modes of economic and industrial life.¹ Even in the interior and regions remote from the trade centers it is found that this change of attitude towards the foreigner has taken place. There is, therefore, nothing now to prevent the free spread among the Chinese people of Western ideas so far as their merits warrant their acceptance.

Political Discussion

In the second place, the idea that government is a matter in which the whole people should take a direct interest and exercise a direct control has spread with great rapidity. The way was prepared for this by the long-held doctrine that all

¹ How far the Chinese have become convinced of the superiority of Western morals and philosophy—of human values—is another matter. It is a very remarkable fact that Europeans and Americans who have lived long in China and obtained a thorough insight into the civilization of China and the general attitude of the Chinese towards life, have doubted whether the Western world has a civilization that is superior to theirs. Thus, to cite a single example, Mr. J. O. P. Bland, in his last book, says:

"As for me, returning to the East from lands wherein all our triumphs of mechanical ingenuity have been turned to purposes of manslaughter, I find myself more than ever compelled to accept and respect the Oriental conception of life—that attitude, founded on the wisdom of the ancients, which has given to their form of civilization a stability and harmony such as our modern world has never known. The philosophy of the Chinese is the birthright, not of an intellectual *élite* (as with us), but of the race; it has taught them that even wealth is only a means to a rational end, that the secret of human happiness lies rather in being than doing, and that, in this unsubstantial pageant of illusions, the spirit is more than the flesh. . . . Despite the burden of physical suffering, the hunger and the squalor imposed upon countless millions of Asiatics by their passivity, and by the intensity of the struggle for survival, accentuated by their procreative recklessness, I hold that the East is wiser and better than the West. I believe that the social institutions which have grown out of the Chinese philosophy are nearer to the truth, and therefore morally superior to our own; and, believing this, I ask myself upon what grounds, and to what purpose, do we persist in endeavoring to impose upon them, not only our mechanical inventions, but our political panaceas and our conflicting creeds?" J. O. P. BLAND, *China, Japan, and Korea* (1921), p. 247.

those who governed should have regard for the welfare of the governed—"Heaven sees and wills as the people see and will." This belief only needed to have added to it the conception that the Central Government is not an agency so far removed from, or elevated above, the life of the ordinary individual that he need not concern himself with its operations or seek to influence its policies. John Stuart Mill says somewhere in his *Considerations on Representative Government* that popular government means government by discussion, and if we take this to be a true description of at least one of its characteristics, it is matter of high significance that recent years should have witnessed throughout China the growth among the people of an interest in the form and doings of their Central Government. This is shown in the discussion of its problems in their rapidly increasing public press. There is thus coming into existence that public will upon which Rousseau laid so much emphasis, and which all modern political psychologists posit as the foundation upon which popular or representative political institutions must be founded. The Parliaments and Provincial Assemblies which China has had since the reform movement of 1908 may not have been conspicuously successful in the legislative field or even in controlling the policies of the executive, but they have borne abundant fruit in habituating the people to the idea that government is a matter to be discussed and that its operations are subject to the criticism of the governed.

Education

The spread of Western education in China, not only through its own schools, but through those maintained by foreign missionary and other agencies, and, still more, through the thousands of "returned students," who have obtained a higher education in the colleges and universities of America and Europe, has, of course, been influential, and, in the future, may be counted upon to be still more influential in making possible the growth of an intelligent public opinion regarding matters political. And, in general, this needs to be said, that probably nowhere else in the world is public opinion, when formed, more powerful than in China. Even under

the absolute monarchy, the Chinese found means, upon frequent occasions, to impose their will upon Imperial officials, and their political philosophy upheld them in so doing. Public opinion determined who should exercise authority in their villages and how it should be exercised. And the very fact that custom played so large a part in conduct of social life was testimony to the powerful and pervading influence of public opinion. Thus all that was needed in the realm of politics was that this public opinion should be educated, directed into proper channels, and provided with means for its authentic expression.

In connection with this matter it is significant to note that the Chinese have been rapidly learning the lesson that a government does not fully justify its existence when it merely maintains a reasonable amount of order and protection against foreign aggression, but that its province properly includes the active and affirmative promotion of the economic, moral and intellectual welfare of its people. This correction is being steadily increased and broadened by the advancing industrialization of China and the appearance of the problems which modern industrial life creates.

Legal Reform

Thirdly, the idea of "positive" law, as distinguished from what Austin has termed "positive morality," imposing definite and rigid obligations and of a coercive rather than a persuasive character, has been making its way. District and appellate courts presided over by judges of technical legal training have been established, and codes covering the whole field of private law are being drafted. For some years, indeed, such a code dealing with criminal law upon its substantive side has been in practical force. Thus, as regards the judicial branch of government, the Chinese have clearly seen the nature of the problem presented to them and are taking steps to solve it.

Political Consciousness and National Patriotism

Finally, there has indubitably been developing a political consciousness and a more genuine political patriotism. This

has been partly the outgrowth of the conditions and forces already referred to, but especially it has been the product of the affronts which China has received from foreign powers—from Japan in particular. It may, perhaps, not be to the credit of the races of men that injuries to themselves are the most efficient of all means for arousing in them an intense nationalism and patriotism, but history the world over bears testimony to the fact that this is the case. Certainly, at any rate, this has been so in China, as has been shown by the popular reactions against such events as the presenting to China by Japan, in 1915, of the Twenty-One Demands, and the failure of China to obtain her request from the powers in the Versailles Treaty of 1919. Especially among the thousands of students the determination has been aroused that a national government shall be created which, in the future, will be able to protect the honor as well as the interests of China against foreign attack.

Friendly Aid to China

Those who best know the substantial virtues of the Chinese and the merits of their civilization have the least doubt of the final outcome of China's effort, if she is given a fair opportunity, to maintain her status as one of the great nations of the world. But they are not so optimistic as to the immediate future unless the Western nations come to her support, or offer aid such as the Chinese people will or should be willing to accept.

At the present time the civil authorities are not able to control the military chieftains (*tuchuns*), who have at their disposal soldiers drawn for the most part from the lowest and most ignorant classes of China and numbering in the aggregate considerably more than a million men. Until the supremacy of the civil over the military authorities can be restored there is little hope for substantial betterment in the domestic conditions of China, and yet, so strong are these lawless military forces, there seems little possibility that the civil authorities can bring them under effective control unless they obtain aid from friendly foreign sources. So, also, the currency and the public revenues have become so demoralized

that similar aid seems to be needed in order that the Chinese may obtain a basis upon which, or a foothold from which, they can work out their own salvation. Likewise, the railway situation has become so complicated, and China's hands tied by so many treaty or loan commitments, that it would seem that there is need of foreign cooperation, especially by way of abandoning certain if not all of these contractual limitations upon China's freedom of action. Also it seems but just, as well as expedient, that these powers should give China adequate assurance that when she has put her own household in sufficient order, they will *pari passu* surrender the extra-territorial rights which they now possess, and permit China to assume local administrative control over the foreign "settlements" at Shanghai and the various "concessions" or areas of foreign trade and residence that exist in other of her larger cities.

The affirmative foreign assistance which is here suggested, and which the present writer is convinced the powers should offer and the Chinese accept, should be based upon a large loan to China for the purpose of enabling her to pay off and thus demobilize her present armies and to establish an effective national army or constabulary under the full control of the civil authorities; to reorganize her banking and currency systems; to bring her railways into one national system and construct certain other lines indispensable as means of communication and transport; and, in general, to reorganize her other public services. The foreign control predicated upon these loans should be for the purpose of seeing that their proceeds are honestly and efficiently expended for the purposes specified, and would, therefore, by no means signify that China should go into political insolvency with the foreign powers as trustees or receivers. All the operations of the government would remain, as now, in the hands of the Chinese, but, to the extent that has been indicated, representatives of the powers participating in the loan or loans should be invested with authority to prevent a misdirection or wasteful expenditure of the moneys advanced, or perhaps in some cases be also empowered to give the necessary affirmative orders for their expenditure. Furthermore, it should not be made

a condition that the foreign overhead control should continue until the maturity of loans, which might be thirty or forty years in the future, but should persist only while the proceeds were being expended and the intended results secured.

The Consortium

If such foreign aid should be extended to and accepted by China it would, for a variety of reasons, be desirable that it should be under the joint auspices of a group of the friendly powers, and it does not need to be said that in the so-called "consortium" as it now exists there is at hand an agency through which this might be done.

In 1913 in an announcement made by President Wilson which led to the withdrawal of the American banks from the then existing "Six-Power Consortium," he said:

The conditions of the loan [then under consideration] seem to us to touch very nearly the administrative independence of China itself, and this Administration does not feel that it ought, even by implication, to be a party to those conditions. The responsibility on its part which would be implied in requesting the bankers to undertake the loan might conceivably go to the length in some unhappy contingency of forcible interference in the financial, and even the political, affairs of that great Oriental State, just now awakening to a consciousness of its power and of its obligations to its people. The conditions include not only the pledging of particular taxes, some of them antiquated and burdensome, to secure the loan but also the administration of those taxes by foreign agents. The responsibility on the part of our Government implied in the encouragement of a loan thus secured and administered is plain enough and is obnoxious to the principles upon which the Government of our people rests.¹

There is no reason to think that Mr. Wilson or his advisers ever lessened their solicitude for the maintenance of the sovereignty and administrative autonomy of China, although at their suggestion and upon their initiative the present consortium was formed for controlling under joint international auspices future loans to China for administrative as well as for industrial purposes involving the issue for subscription by the public of loans guaranteed by the Chinese Government. In his letter of July 9, 1918, to the American group of banks, the Secretary of State said:

¹ JOHN V. A. MACMURRAY, *Treaties and Agreements with and concerning China, 1894-1919* (New York, 1921), vol. II, p. 1025.

I think that I should say frankly that this Government would be opposed to any terms or conditions of a loan which sought to impair the political control of China or lessened the sovereign rights of that Republic.¹

In a later Memorandum, the American Government, more particularly defining its position, said:

The United States Government did not mean to imply that foreign control of the collection of revenues or other specific security pledged by mutual consent would necessarily be objectionable, nor would the appointment under the terms of some specific loan of a foreign adviser—as, for instance, to supervise the introduction of Currency Reform.²

¹ *The Consortium: The Official Text of the Four-Power Agreement for a Loan to China and Relevant Documents* (Washington, 1921), p. 4.

² *Ibid.*, p. 15.

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